

**Meeting Date:** Tuesday 7 May 2013  
**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde  
**Time:** 5.00pm

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**1 CONFIRMATION OF MINUTES - Meeting held on 16 April 2013**

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**Report prepared by:** Section Manager - Governance  
**File No.:** CLM/13/1/3/2 - BP13/91

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**REPORT SUMMARY**

In accordance with Council's Code of Meeting Practice, a motion or discussion with respect to such minutes shall not be in order except with regard to their accuracy as a true record of the proceedings.

**RECOMMENDATION:**

That the Minutes of the Planning and Environment Committee 6/13, held on Tuesday 16 April 2013, be confirmed, subject to an amendment to Item 4 – 66A Pellisier Road, Putney – LDA2012/0106 to read as follows:-

**MOTION:** (Moved by Councillors Pendleton and Simon)

- (a) That Local Development Application No. 2012/0106 for 66a Pellisier Road be approved subject to the **ATTACHED** conditions (Attachment 1).
- (b) That the persons who made submissions be advised of Council's decision.

**Record of Voting:**

For the Motion: Councillors Pendleton and Simon

Against the Motion: Councillors Maggio, Salvestro-Martin and Yedelian OAM

Note: As a result of the voting, this Matter is AT LARGE.

Note: This matter will be dealt with at the Council Meeting to be held on **23 APRIL 2013** as the matter is AT LARGE.

**ATTACHMENTS**

- 1 Minutes - Planning and Environment Committee - 16 April 2013

**ITEM 1 (continued)**

**ATTACHMENT 1**

Planning and Environment Committee  
**MINUTES OF MEETING NO. 6/13**

**Meeting Date:** Tuesday 16 April 2013

**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde

**Time:** 5.00pm

**Councillors Present:** Councillors Simon (Chairperson), Maggio, Pendleton, Salvestro-Martin and Yedelian OAM.

**Apologies:** Nil.

**Leave of Absence:** Councillor Chung.

**Staff Present:** Group Manager – Environment and Planning, Service Unit Manager – Assessment, Service Unit Manager – Environmental Health and Building, Team Leader – Assessment, Senior Town Planner, Business Support Coordinator – Environment and Planning, Section Manager - Governance and Councillor Support Coordinator.

**DISCLOSURES OF INTEREST**

There were no disclosures of interest.

**1 CONFIRMATION OF MINUTES - Meeting held on 2 April 2013**

**RESOLUTION:** (Moved by Councillors Yedelian OAM and Pendleton)

That the Minutes of the Planning and Environment Committee 5/13, held on Tuesday 2 April 2013, be confirmed.

**Record of Voting:**

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee's delegated powers.

**2 22 MONS AVENUE, WEST RYDE. LOT 23, Section C, DP 2322. Local Development Application for demolition, construction of a residential flat building with six (6) apartments and basement car parking for eight (8) cars. LDA2012/0454.**

Note: Sinisa Lazarevic (applicant) addressed the Committee in relation to this Item.

Note: A plan was tabled by the applicant in relation to this Item and a copy is ON FILE.

**ITEM 1 (continued)****ATTACHMENT 1****MOTION:** (Moved by Councillor Pendleton)

- (a) That Local Development Application No. 2012/0454 at 22 Mons Avenue, West Ryde, being LOT 23, Section C, in Deposited Plan 2322 be **REFUSED** for the following reasons:
1. The proposal is contrary to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to meet the objectives of the R4 High Density Residential Zone in the Ryde Local Environmental Plan 2010.
    - a) The proposal does not ensure that *"the building design does not adversely affect the amenity of the locality"*.
  2. The proposal is contrary to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to meet the minimum site area requirement under Clause 4.5B of the Ryde Local Environmental Plan 2010.
    - a) Based on the unit mix proposed, the site area has a shortfall of 17.7m<sup>2</sup>.
    - b) The development does not satisfy the criteria outlined in Clause 4.6 of the RLEP.
  3. The proposal is contrary to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it is inconsistent with the provisions of State Environmental Planning Policy No. 65 – Design Quality for Residential Flat Development.
    - a) The proposal is contrary to Clause 9 Principle 1: Context
    - b) The proposal is contrary to Clause 10 Principle 2: Scale
    - c) The proposal is contrary to Clause 11 Principle 3: Built form
    - d) The proposal is contrary to Clause 12 Principle 4: Density
    - e) The proposal is contrary to Clause 14 Principle 6: Landscape
    - f) The proposal is contrary to Clause 15 Principle 7: Amenity
    - g) The proposal is contrary to Clause 18 Principle 10: Aesthetics
    - h) The proposal is inconsistent with the provisions of the Department of Planning *"Residential Flat Design Code"* in relation to building height, building separation, setbacks, landscape design, open space, orientation, visual privacy, building entries, vehicle access, storage, daylight access and facades.
  4. The proposal is contrary to Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the Draft Ryde Local Environmental Plan 2011.
    - a) The proposal is of a type and density that does not:
      - accord with urban consolidation principles;



**ITEM 1 (continued)**

**ATTACHMENT 1**

- promote compatibility with the existing environmental character of the locality;
    - have a sympathetic and harmonious relationship with adjoining development; and
    - enhance the amenity and characteristics of established residential areas.
  - b) The proposal does not preserve or improve the existing character, amenity and environmental quality of the land.
- 5. The proposal is contrary to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the requirements of the Ryde Development Control Plan 2010.
  - a) The proposal is contrary to the objectives of Part 3.4 - Residential Flat Buildings and Multi Dwelling Housing (not within the Low Density Residential Zone) of the RDCP as it will:
    - Not encourage a high architectural and landscape standard;
    - Will not preserve and enhance the existing residential amenity of the site and surrounding area;
    - Will not regulate the physical characteristics of residential flat development in order to preserve the character of the area; and
    - Does not ensure maximum privacy, sunlight and air, both within and without the site.
  - b) The proposal does not comply with the maximum building height prescribed in "storeys" in Part 3.4 of the RDCP.
  - c) The proposal does not comply with the front, side and rear setback requirements of Part 3.4 of the RDCP.
  - d) The proposal does not comply with the internal setback requirements of Part 3.4 of the RDCP.
  - e) The proposal does not comply with the minimum landscaped area requirements of Part 3.4 of the RDCP.
  - f) The materials and finishes for the development are not appropriate and contribute to the visual dominance of the development and are therefore contrary to Part 3.4 of the RDCP.
  - g) The proposal is unsatisfactory with regard to the retaining wall requirements in Part 3.4 of the RDCP.
  - h) The location and design of the waste storage area is unsatisfactory with regard to the requirements of Part 7.2 of the RDCP.
  - i) The proposed driveway does not comply with the maximum width requirements in Part 8.3 of the RDCP.
  - j) The proposed stormwater disposal method for the site does not meet the requirements of Clause 2.1.1 of Part 8.4 of the RDCP as consent has not been granted by the property owner(s) at No. 23-25 Station Street with regard to the easement for drainage across the site.
  - k) The proposal does not meet the access and mobility requirements of Part 9.2 of the RDCP in relation to disabled access provision to the

**ITEM 1 (continued)**

**ATTACHMENT 1**

- outdoor common area.
- l) The proposed visitor space does not comply with the minimum width requirement in Part 9.2 of the RDCP.
  - m) The proposal is unsatisfactory with regard to the fencing requirements in Part 9.4 of the RDCP as inadequate information has been submitted to confirm details of the proposed fencing.
6. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal is likely to have an adverse impact upon the built environment in that the bulk and scale of the development will create an unreasonable sense of enclosure to the neighbouring properties and will adversely impact on the visual amenity of the Mons Avenue streetscape. Furthermore, the proposal is likely to result in the isolation of the adjoining property at No. 20 Mons Avenue, West Ryde and the possible isolation of No. 24 Mons Avenue, West Ryde.
7. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site.
8. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest, pertaining to the number of objections that have been received in relation to the proposal.
9. The proposal is contrary to Section 5(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that it will not encourage the "promotion and co-ordination of the orderly and economic use and development of land" as the development application will result in the likely isolation and potential "sterilisation" of No. 20 and 24 Mons Avenue, West Ryde.
- a) The Applicant has not acted in accordance with the process and requirements of the NSW Land and Environment Court Planning Principles for site isolation.
  - b) The Applicant has failed to adequately demonstrate that No.'s 20 and 24 Mons Avenue, West Ryde, will not be isolated and sterilised as a result of the proposed development.
  - c) The development application, in this regard, will likely result in the isolation of sites, fragmentation of the Mons Avenue Streetscape and will set a precedent for future undesirable overdevelopment of small lots.
- (b) That the persons who made submissions be advised of Council's decision.

Note: The above Motion LAPSED for want of a seconder.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**RECOMMENDATION:** (Moved by Councillors Maggio and Salvestro-Martin)

- (a) That Local Development Application No. 2012/0454 at 22 Mons Avenue, West Ryde, being LOT 23, Section C, in Deposited Plan 2322 be deferred to give the applicant the opportunity to address the reasons for refusal in the Council Officer's report by exploring the possibilities of site amalgamation and to reduce some of the non-compliances.
- (b) That a further report be presented to Planning and Environment Committee within six months.
- (c) That the persons who made submissions be advised of Council's decision.

**Record of Voting:**

For the Motion: Unanimous

Note: This matter will be dealt with at the Council Meeting to be held on **23 APRIL 2013** as substantive changes were made to the published recommendation.

**3 93-95 VIMIERA ROAD, EASTWOOD. LOT 9 SP 68723. Section 96 application to delete condition of consent requiring compliance with (former) State Environmental Planning Policy No 5 - Housing for Older People or People with Disabilities. MOD2012/122.**

Note: Dr Agnes Lau (objector) and Mr Zheng Liu (applicant) addressed the Committee in relation to this Item.

**RECOMMENDATION:** (Moved by Councillors Salvestro-Martin and Yedelian OAM)

- (a) That the Section 96 application MOD2012/0122 to modify Local Development Application No. LDA1999/1609 at 93-95 Vimiera Road Eastwood being LOT 9 SP 68723 be refused for the following reasons;
  - 1. Deletion of the subject condition of consent (condition 2) would lead to a reduction in the amount of housing specifically designed and approved for older people/people with a disability.
  - 2. The proposed modification is not substantially the same development as the development for which consent was originally granted, and so Council does not have the power to approve the proposed modification.
  - 3. In the circumstances of the case, approval of the Section 96 application would not be in the public interest.
- (b) That the persons who made submissions be advised of Council's decision.

**ITEM 1 (continued)**

**ATTACHMENT 1**

- (c) That the Manager Health and Building be requested to re-commence enforcement action that will ensure compliance with Condition 2 of Consent No 1999/1609, and that the owners of the property be required to either vacate the premises or take action to ensure that the premises are being occupied in accordance with State Environmental Planning Policy No. 5 within 24 months.
- (d) That the applicant's Section 96 application fee be refunded.

**Record of Voting:**

For the Motion: Councillors Pendleton, Salvestro-Martin, Simon and Yedelian OAM

Against the Motion: Councillor Maggio

Note: This matter will be dealt with at the Council Meeting to be held on **23 APRIL 2013** as dissenting votes were recorded and substantive changes were made to the published recommendation.

**4 66A PELLISIER RD, PUTNEY. LOT B DP 419543. Local Development Application for new dual occupancy. LDA2012/0106.**

Note: Janet Bailey (objector), Don Bailey (objector on behalf of neighbouring residents) and Peter Hall (applicant) addressed the Committee in relation to this Item.

Note: A document was tabled by Don Bailey (objector) in relation to this Item and a copy is ON FILE.

**RECOMMENDATION:** (Moved by Councillors Pendleton and Simon)

- (a) That Local Development Application No. 2012/0106 for 66a Pellisier Road be approved subject to the **ATTACHED** conditions (Attachment 1).
- (b) That the persons who made submissions be advised of Council's decision.

**Record of Voting:**

For the Motion: Councillors Pendleton and Simon

Against the Motion: Councillors Maggio, Salvestro-Martin and Yedelian OAM

Note: This matter will be dealt with at the Council Meeting to be held on **23 APRIL 2013** as dissenting votes were recorded.

The meeting closed at 6.21 pm.

CONFIRMED THIS 7TH DAY OF MAY 2013.

Chairperson

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**2 305 BLAXLAND ROAD & 5-7 NORTH ROAD, RYDE. LOT 1 DP1069680 & LOT A&B DP 414322. Local Development Application for alterations and additions to San Antonio da Padova Nursing Home. LDA2012/247.**

***INTERVIEW***

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**Report prepared by:** Team Leader - Assessment

**Report approved by:** Manager Assessment; Group Manager - Environment & Planning

**Report dated:** 26/04/2013

**File Number:** grp/09/5/6/2 - BP13/624

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**1. Report Summary**

**Applicant:** Restifa & Partners Pty Ltd

**Owner:** S.Antonio da Padova Protettore di Poggioreale Trapani (Sydney) Ltd

**Date lodged:** 17 July 2012

This report deals with a development application (DA) for alterations and additions to the San Antonio da Padova Nursing Home. In summary (refer to body of the report for more detail), the development involves:

- erection of a new 2 storey building above at-grade parking on the western side of the site (ie corner of North Road and Aeolus Ave) – demolition of the existing 1-2 storey buildings in this location will be subject of a separate application;
- construction of part 3/part 4 storey additions to the existing building along the eastern side of the site, as well as various internal alterations/additions to the existing building at the southern/eastern side of the site;
- the new buildings are proposed to contain accommodation rooms, and related facilities such as common resident dining/lounge rooms, nurses' station, prayer rooms, and staff facilities (offices, storage).
- various external works associated with the new buildings including landscaping works, new driveways (and alterations to existing driveways), access ramps/stairs, and courtyards.

In terms of usage, the development proposes to increase the capacity of the nursing home from 50 beds (existing) to 112 beds, as well as an increase in the number of staff working on the site (2 full-time staff members remains unchanged; the total number of part-time staff increases from 24 to 41; and the total number of staff on duty at any one time will increase from 13 to 25).

**ITEM 2 (continued)**

The provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 – referred to as “SHSEPP” throughout this report – apply to the proposed development. Assessment of the proposal in terms of the SHSEPP indicates the following areas of non-compliance:

- Maximum height in metres (maximum 8m; proposed up to 12.12m at highest point);
- Maximum height in number of storeys (maximum 2 storeys; proposed is part 3/part 4 storeys);
- Maximum height for the rear 25% of the site (maximum 1 storey; proposal has existing 2-3 storey buildings in what is considered to be the rear 25% – given that the development has been designed to “front” Aeolus Ave);
- Landscaped area (SHSEPP requires 25m<sup>2</sup> landscaping per residential care facility bed – ie 2800m<sup>2</sup> for this development; the development proposes a total of 2390m<sup>2</sup>)

The proposal has been advertised and notified to neighbours in accordance with Council’s DCP 2010 (Part 2.1, Notification of Development Applications). 19 submissions have been received raising a range of issues including unacceptable visual bulk due to excessive height; inadequate landscaping; visual and acoustic privacy; loss of outlook/views; shadow impacts.

The proposal has also been referred to a number of sections of Council, as well as externally to the Roads and Maritime Services (“RMS” – formerly Roads and Traffic Authority (RTA)). This referral process, as discussed in detail in the body of the report, has raised a particular issue of concern from the RMS regarding vehicle/traffic safety regarding the driveway on North Road. The RMS have advised that they consider the driveway on North Road to be unsatisfactory, because

- it interferes with traffic signal operation;
- the driveway would be blocked by vehicles stopped at the North Road signal approach – and hence it is not suitable for emergency vehicle access;
- the driveway fails to satisfy AS2890.1:2004 regarding sight lines for pedestrian safety.



**ITEM 2 (continued)**

It is generally considered that the design of the development as currently submitted is an over-development of the site and is unsatisfactory and cannot be supported by Council officers. The specific issues of concern with the current proposal are:

1. Vehicle access (driveway on North Road), in particular the issues of concern raised by Roads and Maritime Services (RMS) – which are that the driveway interferes with signal operation (as traffic leaving this driveway would obstruct traffic approaching this signal), the driveway is not suitable for emergency vehicle access (as the driveway would be blocked with only one or two vehicles stopping at the North Road signal approach), and the driveway also fails to satisfy AS2890.1:2004 Figure 3.3 *Minimum Sight Lines for Pedestrian Safety*;
2. The height of the proposed building on the eastern side (addition to existing building) is excessive – both in terms of the number of storeys and height measured in metres, and should be amended to ensure compliance with the height requirements of the SHSEPP;
3. The landscaped area is inadequate, and should be increased in particular to at least ensure compliance with the minimum amount of landscaped area required by the SHSEPP, and that more of a buffer is provided to the adjoining properties to the east – to improve concerns regarding privacy, visual amenity and bulk;
4. The setback and architectural modulation of the proposed building on the western side (to North Road) is unacceptable, and the setbacks and architectural modulation should be increased to address issues of concern regarding visual bulk when viewed from that Road.

It is recommended that the DA be deferred to enable the applicant to submit amended plans and/or additional information which address these issues. Upon receipt of this information, it will be necessary to re-notify neighbours and all previous objectors. A further report will be prepared to the Planning & Environment Committee after the completion of this process. Alternatively, if Council is mindful to determine the application at this stage, it is recommended that the DA be refused for reasons relating to the above issues of concern.

**Reason for Referral to Planning and Environment Committee:** Requested by Councillor Salvestro-Martin and Councillor Pendleton; nature of proposed development; number of submissions received.



**ITEM 2 (continued)**

**Public Submissions:** A total of 19 submissions were received objecting to the development, including:

- (a) 13 submissions to the original plans (notified from 7 to 29 August 2012); and
- (b) A further 6 submissions when amended plans/additional information was re-notified (from 1 to 18 March 2013)

SEPP 1 (or clause 4.6 RLEP 2010) objection required? Yes – a SEPP 1 objection to the height provisions in clause 40(4) (a) (b) and (c) of the SHSEPP has been submitted with this DA.

Value of works: \$15,639,250

**RECOMMENDATION:**

(a) That Council defer consideration of Local Development Application No 2012/247 at 305 Blaxland Road and 5-7 North Road being LOT 1 DP1069680 & LOT A&B DP 414322 to enable the applicant to submit amended plans and details addressing the issues of concern regarding the current design of the development. The specific issues of concern are:

1. Vehicle access (driveway on North Road), in particular the issues of concern raised by Roads and Maritime Services (RMS) – which are that the driveway interferes with signal operation (as traffic leaving this driveway would obstruct traffic approaching this signal), the driveway is not suitable for emergency vehicle access (as the driveway would be blocked with only one or two vehicles stopping at the North Road signal approach), and the driveway also fails to satisfy AS2890.1:2004 Figure 3.3 *Minimum Sight Lines for Pedestrian Safety*;
2. The height of the proposed building on the eastern side (addition to existing building) is excessive – both in terms of the number of storeys and height measured in metres, and should be amended to ensure compliance with the height requirements of the SHSEPP;
3. The landscaped area is inadequate, and should be increased in particular to at least ensure compliance with the minimum amount of landscaped area required by the SHSEPP, and that more of a buffer is provided to the adjoining properties to the east – to improve concerns regarding privacy, visual amenity and bulk;

**ITEM 2 (continued)**

4. The setback and architectural modulation of the proposed building on the western side (to North Road) is unacceptable, and the setbacks and architectural modulation should be increased to address issues of concern regarding visual bulk when viewed from that Road.
- (b) That the amended plans and additional information referenced in (a) above shall be re-notified to the neighbouring properties and previous submitters to the original DA.
- (c) A further report will be prepared to the Planning & Environment Committee after the completion of this process.

**ATTACHMENTS**

- 1 Prelodgement Notes
- 2 Submissions from Kerry Gordon Planning Services on behalf of the Body Corporate of 1 Aeolus Avenue - CIRCULATED UNDER SEPARATE COVER
- 3 Applicant's response to submissions received - CIRCULATED UNDER SEPARATE COVER
- 4 Assessment regarding Urban Design Guideline for Infill Housing Development
- 5 Applicant's SEPP 1 objection regarding height
- 6 A4 Plans
- 7 Map
- 8 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Chris Young**  
**Team Leader - Assessment**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager - Environment & Planning**

## ITEM 2 (continued)

### 2. Site (Refer to attached map.)

**Address** : 305 Blaxland Road and 5-7 North Road, Ryde

**Site Area** : 5458m<sup>2</sup>  
Irregular-shape allotment:  
Frontage: 108.98m (total of Blaxland Road and North Road frontages);  
39.75m (northern boundary ie Aeolus Ave frontage).  
Allotment Depth: 85.9m along eastern boundary

**Topography and Vegetation** : The site generally slopes down from the northern end (Aeolus Ave) by some 7m over the 85.9m length of the site – and contains existing landscaped areas and courtyards with no significant vegetation.

**Existing Buildings** : Existing 2-storey building at the southern end of the site (above basement parking and kitchen/laundry and storage facilities)

Existing vacant 1-2 storey buildings at northern end of the site (to be demolished under separate application).

### Planning Controls

- Zoning** : • R2 – Low Density Residential – Ryde LEP 2010
- Other** : • Ryde Local Environmental Plan 2010 – Mandatory Provisions
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (referred to as “SHSEPP” throughout this report)
  - Draft Ryde LEP 2011 (R2 Low Density Residential)
  - Ryde DCP 2010

**ITEM 2 (continued)**



**3. Proposal**

The development proposes alterations and additions to the San Antonio da Padova nursing home existing on the property. The development involves the construction of a new 2 storey building above at-grade parking, and construction of new part three/part four storey additions to the existing building, and various internal alterations/additions to the existing building, as well as various associated external works including landscaping works, new driveways (and alterations to existing driveways), new parking areas, access ramps and stairs and courtyards.

Demolition of the existing structures on No 5 and 7 North Road would be required to enable the proposed works, and would be the subject of a separate development application.

The proposal is to extend the capacity of the nursing home from 50 to 112 beds, and associated with this increased resident capacity, there will also be an increase in staff numbers (mostly part-time staff – 2 full-time staff members remains unchanged; the total number of part-time staff increases from 24 to 41; and the total number of staff on duty at any one time will increase from 13 to 25).

This application also seeks consent for the use of the cafe, hairdressers and physiotherapy elements of the nursing home, all of which are located on the ground floor. These facilities may be operated by either the Village or individually leased, but will be only for the use of residents, excepting the cafe which would also be used by visitors and staff. Operating hours for each use will be 9am - 5pm, every day. Where possible, the fit-out of the uses would proceed as complying development under the



**ITEM 2 (continued)**

provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The applicant has provided a detailed “scope of works” within the DA Statement of Environmental Effects, and this is reproduced below to provide full details of the works at each level of the building:

<b>Level</b>	<b>Scope of works</b>
Existing Basement	Expand and refurbish the basement level to provide for improved ancillary operational facilities (e.g. kitchen/laundry, storage, archives, IT). Parking will be reduced by 1 space to total of 16 spaces.
Existing lower ground	<ul style="list-style-type: none"> <li>• Alterations and refurbishment of existing building to create new floor nurses' station, ancillary staff spaces/facilities, expanded kitchen facility, 5 new accommodation rooms and new quiet sitting room;</li> <li>• Additions to existing building to provide new kitchen, living/dining room, nurse's station, lift and ancillary staff spaces/facilities.</li> </ul>
Existing ground floor	<ul style="list-style-type: none"> <li>• Alterations and refurbishment of existing building to create new kitchen, storerooms, staff amenities, nurse's station and 5 new accommodation rooms;</li> <li>• Additions to existing building to create new main entry from Aeolus Avenue with associated reception and administration space, resident facilities (cafe, hairdresser, physio, library) resident dining/lounge, prayer room, nurse's station with associated office and various general storage/operational facilities;</li> <li>• New vehicle entry from Aeolus Avenue, new loading dock and drop-off space at main entry, new internal one-way circulation driveway connecting to North Road and 13 parking spaces;</li> <li>• New landscape treatment including new central courtyard and pedestrian access from Aeolus Avenue to main entry.</li> </ul>
New level 1	Additions to provide 27 accommodation rooms, library/sitting areas, nurses' station, ancillary staff/storage/operational facilities, living/dining rooms, sitting rooms and communal terraces.
New Level 2	Additions to provide 24 accommodation rooms, library/sitting areas, nurses' station, ancillary staff/storage/operational facilities, living/dining rooms, sitting rooms and communal terraces.

**ITEM 2 (continued)****4. Background**Subject Site

Consent was originally granted by Council in 1959 to commence a Rest (Convalescent) Home at 7 North Road (originally the Aeolus Nursing Home). Various alterations and additions were subsequently constructed, and in 1987, the capacity of the development was 40 beds with 13 parking spaces.

In November 2001, consent was granted (LDA2001/207) to construct a 2 storey, 50 bed nursing home with recreation/prayer room and 27 parking spaces. This development was approved with a maximum height of 8.5m, and subsequent Section 96 modification applications were lodged and approved to increase the height of the plant room (to 9.6m) in 2004, and also to alter the appearance of the porte cochere and landscaping plan in 2009.

Pre-Lodgement Meeting 24 May 2012

Prior to lodgement of this DA, a Pre-Lodgement Meeting was held between the applicant and their representatives (including architects, town planners and traffic engineers) and Council officers to discuss potential issues of concern regarding their proposed development. A full copy of the Pre-Lodgement Meeting Minutes are held at **ATTACHMENT 1** to this report.

In summary, the matters discussed in the Pre-Lodgement meeting included:

1. Description of Proposal;
2. Zoning, permissibility and relevant statutory framework;
3. Background information driving the design of the development should be provided in the Statement of Environmental Effects submitted with the DA.
4. DA submission requirements;
5. Adequacy of Built Form and Urban Design;
6. Issues regarding Height;
7. Issues regarding streetscape and setbacks;
8. Relationship to adjoining development;
9. Adequacy of vehicular access arrangements onto and from the site;
10. Adequacy of arrangements for vehicle access across the site;
11. Traffic, Loading and Parking;
12. Waste Management;
13. Stormwater and Drainage/On-Site Detention;
14. Shadow Diagrams;
15. Landscaping Plan and Tree Removal;

**ITEM 2 (continued)**

- 16. Demolition;
- 17. Heritage Issues;
- 18. Sustainability;
- 19. Safer by Design (Crime Prevention through Environmental Design CPTED);
- 20. Acoustic Issues

In summary, it was identified (both in the applicant's pre-lodgement submission and in the Pre-Lodgement Advice from Council) that there were substantial issues of concern with the design of the development to be addressed in the formal DA submission, including bulk and scale, height, and setbacks.

As an outcome of the meeting, it was stated that:

*Council's preferred option for any proposed development is that it complies fully with the applicable controls. The proponents have come forward with a proposal that does not comply numerically with controls for height, setbacks and landscaping areas. The pre-lodgement submission acknowledges this and the proponent has indicated a wish to proceed with a proposal at this scale for other reasons. The approach therefore is to attempt to address all the relevant matters so that the application can be effectively assessed on its merits.*

**Proposed Development – LDA2012/247**

The subject DA was lodged on 17 July 2012, and shortly thereafter it underwent preliminary assessment review, internal and external referrals to other officers, and notification/advertisement to neighbours (for an initial period from 7 to 29 August 2012). A total of 13 submissions were received following the original notification process, as discussed in the *Submissions* section of this report (see below).

On 14 August 2012, following receipt of comments from Council's Consultant Landscape Architect, a letter was sent to the applicant to request additional information to clarify various landscape matters including details on site works close to trees to be retained, trees to be removed, possible amendments to the landscaping plan, details of soil depth and drainage to the podium/courtyard planter boxes, off-site planting and stormwater management associated with the landscaping. A response from the applicant was subsequently provided on 7 September 2012.



**ITEM 2 (continued)**

On 4 September 2012, advice was received from the NSW Roads and Maritime Services (“RMS”) raising road safety and traffic efficiency concerns regarding the proposed driveway off North Road, and requesting that *“the plans be modified to remove or relocate the driveway further away from the signalised intersection of Blaxland Road and North Road”*. See the “Referrals” section of this report for further detail.

At this stage, preliminary comments were also received from Council’s Development Engineer, requiring various additional technical information regarding the submitted stormwater details (including a computer drainage analysis, catchment plan, design the gutters, downpipes and pipeline for the 1 in 100 year storm event, and documentary evidence that the property has a legal right to drain into the drainage system through the laneway/park and downstream properties.

A further letter was sent to the applicant on 10 September 2012 to request them to address the above issues from Council’s Development Engineer and also to advise the applicant of the concerns raised by the RMS, and request a response to the RMS’ concerns.

On 4 October 2012, Council received a response to Council’s letter 10 September 2012, which included a response to the Engineering matters, the concerns raised by the RMS, and a brief response to the submissions from the neighbours.

The applicant’s response regarding the RMS concerns were forwarded to the RMS for their review. On 14 December 2012, further comments were received from the RMS which re-iterated their concerns about the development. These comments were provided to the applicant on 18 December 2012. In relation to the RMS concerns, the applicant met with the RMS on 11 January 2013, and provided notes to Council to indicate what was discussed. This matter is discussed in more detail in the “Referrals” section of this report.

On 12 February 2013, the applicant provided amended plans and a more detailed response to the issues of concern raised in the neighbour’s submissions. In summary, the amendments included a modification to the roof form (reduction in height) of the additions adjacent to the eastern boundary; increase the amount of landscaped area along the driveway; installation of a louvred acoustic privacy screen along the external service walkway along the eastern side of the proposed additions; and alterations to the loading dock roof by removing the terrace and parapet.

The amended plans were re-notified to the neighbours (and previous objectors) for a period from 1 March to 18 March 2013, and 6 further submissions were received – see “Submissions” section of this report.

**ITEM 2 (continued)****5. Councillor Representations**

Name of Councillor: Councillor Salvestro-Martin

Nature of the representation: Request that the application be called up to the Planning & Environment Committee as soon as possible.

Date: 18 September 2012

Form of the representation (e.g. via email, meeting, phone call): Email to Councillor Help Desk

On behalf of applicant or objectors? Not known

Any other persons (e.g. consultants) involved in or part of the representation: Not known

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Name of Councillor: Councillor Pendleton

Nature of the representation: Call-up to the Planning & Environment Committee

Date: 11 January 2013

Form of the representation (e.g. via email, meeting, phone call): Email to Councillor Help Desk

On behalf of applicant or objectors? Objector (address not specified in Councillor's request)

Any other persons (e.g. consultants) involved in or part of the representation: Not known

**6. Political Donations or Gifts**

None disclosed in either the DA documentation or in any submission received.

**7. Submissions**

The proposal was advertised and notified in accordance with Development Control Plan 2010 – Part 2.1, Notification of Development Applications. The application was advertised on 8 August 2012, and notification of the proposal was from 7 to 29 August 2012.

**ITEM 2 (continued)**

When amended plans and further information was received, the DA was re-notified to neighbours for a period from 1 to 18 March 2013.

In response to this notification/advertising process, a total of 19 submissions were received – 13 in relation to the original notification, and a further 6 to the re-notification of amended plans/additional information.

The submissions often raise the same/similar issues to other submissions, and so the issues of concern are summarised and discussed in the following section.

Also, the submissions include detailed submissions from Kerry Gordon Planning on behalf of the body corporate of No 1 Aeolus Ave (immediately to the east), which are included in full as **Attachment 2** – CIRCULATED UNDER SEPARATE COVER to this report. The applicant has been provided with copies of the submissions from Kerry Gordon Planning, and has provided a detailed submission in response to that submission. The applicant's response is also included at **Attachment 3** – CIRCULATED UNDER SEPARATE COVER.

**A. Overdevelopment of the site.** *Various concerns are raised in the submissions that the development is an overdevelopment of the site for the following reasons:*

- *It is at least 4m over the 8m max height control.*
- *It is 2 storeys over the maximum 2 storey height control at the boundary.*
- *It presents as one storey higher than other development within the streetscape.*
- *There is inadequate perimeter landscaping around the boundaries of the site.*
- *There is no landscape setting when viewed from Aeolus Avenue.*
- *The site is 428m<sup>2</sup> deficient in landscaping.*
- *The increase from 50 to 112 beds is too high for this area and is an attempt to maximise profit while demonstrating a blatant disregard for the needs/rights of adjoining residents.*
- *The surrounding area is mostly single storey housing and the density and scale of the proposal is inappropriate.*
- *No data has been provided to support the claim that there is a need to expand the capacity of the nursing home.*

Comment: The particular areas of concern regarding over-development (ie height, lack of landscaping, setbacks etc) are discussed later in this Submissions section of the report, as well as in the Section regarding assessment against the SHSEPP.

**ITEM 2 (continued)**

It is generally agreed that the development is an over-development given the proposed height, setbacks (to North Road), and landscaping provision. Although the site adjoins a residential flat development (1 and 3 Aeolus Ave immediately to the east), this is an older-style form of residential flat development not characteristic of the area which is mostly low density and 1-2 storeys in height. This development would be out of character with such surrounding adjoining development.

In regard to concerns that no data has been provided to support the claim that there is a need to expand the capacity of the nursing home, it is generally well-known that there is an “ageing population” and so it is considered that appropriate facilities in particular housing for older people/people with a disability is a response to community need. However, the particular design proposed in this application raises many valid issues of concern as discussed throughout this report, and is not supported. It is recommended that the application be deferred to enable the applicant to address the issues of concern, as discussed in the Recommendation (below).

**B. Increased Height.** *A number of issues of concern on this topic have been raised in the submissions, including:*

- *Caused by the building stepping up rather than stepping down with the topography of the site.*
- *The proposal is visually intrusive and bulky in the streetscape and does not meet the objectives of the Low Density Residential Zone.*
- *The height exceeds the controls in the SHSEPP in particular that the rear 25% be 1 storey.*
- *The 3-4 storey scale of the development is inconsistent with the development characteristics of the area.*
- *The excessive height will result in unacceptable visual bulk impact on the living areas, balconies and bedroom of the adjoining apartments.*
- *The building will almost completely obscure any outlook to the sky from the adjoining apartments.*
- *The building should be lowered to comply with the 2 storey height requirement adjacent to the boundary.*
- *There has been no attempt to disguise the visual bulk by the use of landscaping or a suitable degree of articulation.*
- *The development has not been designed to reduce impact on the adjoining residents as the proposed buildings are on the side rear the residential units.*
- *The design around a central garden/courtyard is unfair to adjoining residents as it causes them to suffer a 4 storey building next to this boundary.*

**ITEM 2 (continued)**

- *The height exceeds the permitted 8m by 2.6 – 4.12m*
- *The nearby 3-4 storey residential flats are located on a steep part of this site but are 2 storeys at the street. Cannot be used to justify the proposed 4 storeys.*
- *The SEPP1 Objection to the height is inadequate and has failed to demonstrate why street compliance with the height is unnecessary.*

Comment: These concerns are generally supported. As discussed in the assessment on the SHSEPP (later in this report), the height of the proposed building along the eastern boundary (as an addition to the existing building) varies between 10.62m to 12.12m, which substantially exceeds the SHSEPP control (8m) and is considered excessive in height, bulk and scale when viewed from the adjoining property to the east.

As noted above, whilst the development immediately to the east (1 and 3 Aeolus Ave) contains 2 residential flat buildings, this adjoining development is an older-style residential flat development which not typical of the style of other development (also not permissible within) in the R2 Low Density Residential zone. It is generally considered that this form of development should be considered as an exception rather than precedent that can be replicated at this site.

Accordingly, it is recommended that the application be deferred to enable the applicant to fully address this issue by requiring the building adjoining the eastern boundary (ie extension to the existing building) to not exceed the height limits prescribed in the SHSEPP – ie 8 metres and 2 storeys. The impacts which result from the proposed height (eg view loss) are discussed in more detail in following objections.

**C. Overshadowing.** *Several areas of concern have also been raised regarding increased overshadowing from the owners of units in No 1 and 3 Aeolus Ave (to the east), including:*

- *The western façade of the apartments receives no substantive solar access in mid-winter until 1pm. The proposal will reduce this to less than 2 hours and as such is unacceptable.*
- *The impact of shadows is attributed to the excessive 4 storey height and as such it cannot be supported.*
- *Increased overshadowing that will block out the little sun they receive at present.*
- *Shadow plans are not to scale and do not provide an adequate assessment of shadow impact mid-winter.*



## ITEM 2 (continued)

Comment: The shadow diagrams (for the winter solstice 21 June) from the proposed development are provided below (and larger A3 sized plans are included in the Councillors Attachments package attached to this report). Given the orientation of the land, the shadows from the development would fall mostly onto the street (North Road to the west) during the morning period (ie 9-10am), then only within the site (10am to about 1pm), and would then only begin to affect the neighbours to the east from 1-2pm onwards. Such an impact would be considered to be reasonable considering the scale of the development.

Concerns that the western side of the buildings at No 1 and 3 Aeolus only receive sunlight after 1pm (and so any impact from this development is unreasonable) are not supported. Much of the overshadowing within the adjoining site (1 and 3 Aeolus) is caused by own buildings within that site (“self-shadowing”).

If the proposal was amended to address other concerns (ie height, setbacks etc as discussed throughout this report), the extent of impact – such as the length of shadows – could be reduced, however it is considered that any overshadowing would only begin to affect the neighbours after early afternoon (1-2pm) because of the orientation of the land. Overall issues regarding overshadowing onto No 1 and 3 Aeolus Ave to the east are considered to be minor in the context of this development.



**ITEM 2 (continued)**



**D. Loss of view/outlook.** Concerns are raised that the excessive height, bulk and scale of the development will cause unreasonable loss of outlook/views (ie district views, views of the sky etc), and the proposal fails to meet the view sharing principles established by the Land and Environment Court. A development that complies with the 2-storey height control would retain a large portion of the existing views.

Comment: It is generally agreed that if the development was reduced in height to comply with the 2 storey and 8m height limits prescribed in the SHSEPP it would have the effect of preserving the views available to the neighbours to the east to a reasonable degree (for a 2 storey development that is permissible within the R2 Low Density Residential zone).

The Land and Environment Court has considered view sharing/view impacts in development proposals and has established a *Planning Principle* to assist in the consideration and assessment of these issues. This is known as the *Tenacity* principle following the Court's consideration of *Tenacity vs Warringah Council (2004)*.

Although the *Tenacity* principle is more commonly applied to developments with particular types of views (water views etc), it may equally be applied to any development situation where view impacts emerge as an issue of concern. The following is an assessment of the subject proposal using the four *Planning Principles* laid down in *Tenacity*:

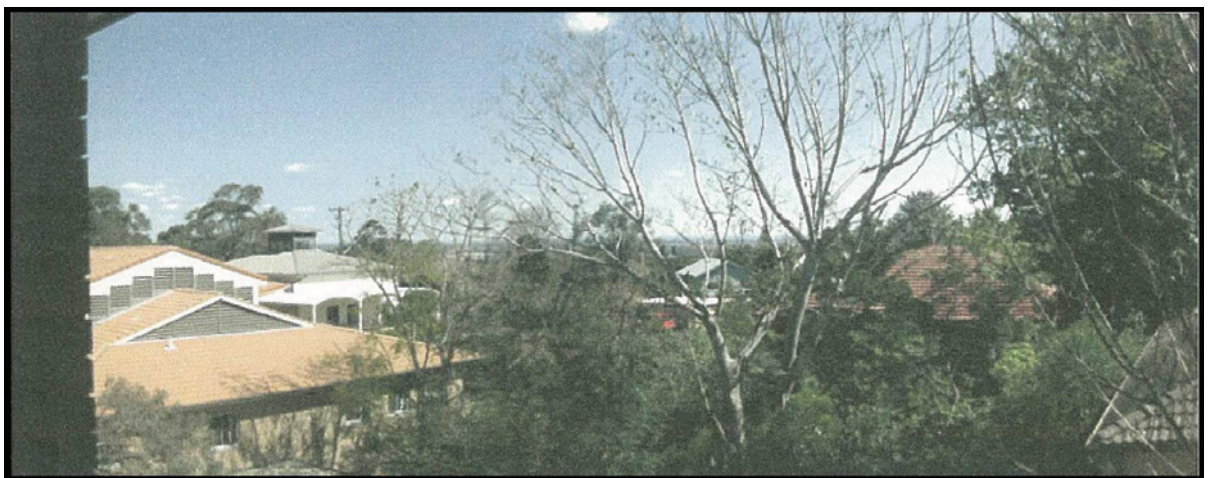


## ITEM 2 (continued)

*The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.) To decide whether or not view sharing is reasonable, I have adopted a four-step assessment.*

*The **first step** is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Assessment Officer's Comment: The residential flat units (in particular those on the upper levels) of the properties to the east (No 1 and 3 Aeolus Ave) enjoy restricted district-type views towards the west across the subject property. In particular, the views are restricted by vegetation and the roofs of existing buildings. An example of the views currently enjoyed, from an upper level rear unit of the building immediately adjoining the common boundary with the subject site, is shown in the following photo.



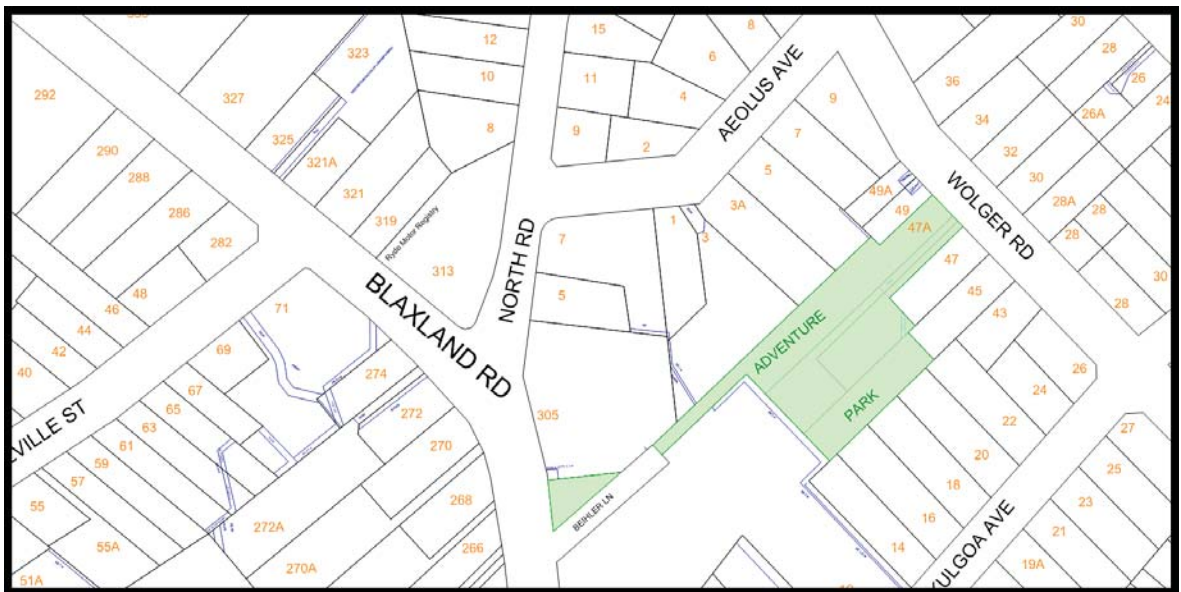
Views from the middle to lower levels of the adjoining residential flat building are more obscured by buildings and vegetation, however these units currently enjoy an "outlook" eg views of the sky.

*The **second step** is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

**ITEM 2 (continued)**

Assessment Officer's Comment: The above views are obtained from those living area and bedroom windows, as well as balconies of the units facing west, and such views are available in either a standing or a sitting position (depending on the location of the unit enjoying the view).

The shape of the allotments (see allotment plan below) is somewhat unusual, however the views from 1 and 3 Aeolus Ave would be considered to be side views over the subject property, which are recognised in *Tenacity* as being more difficult to protect.

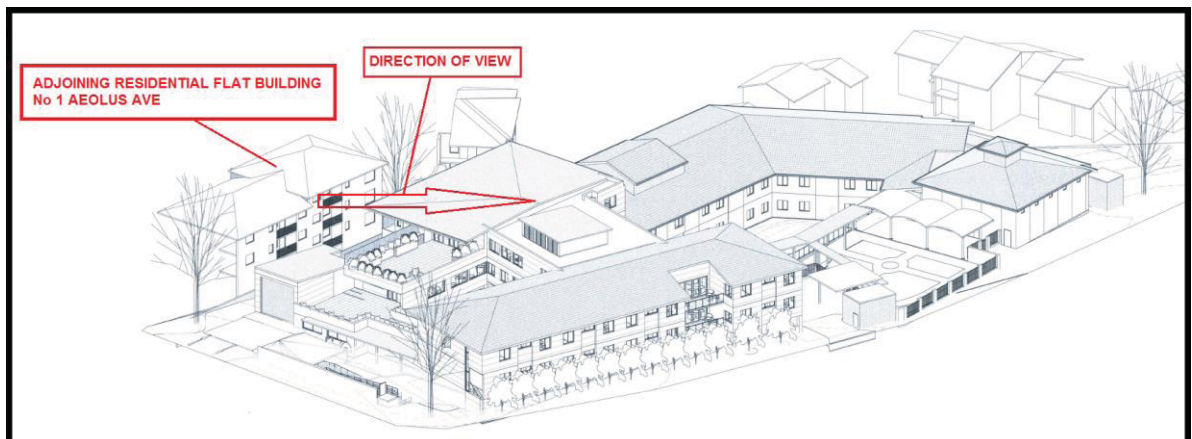


*The **third step** is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Assessment Officer's Comment: The extent of the impact on views from the top level of the west-facing units of the adjoining residential flat building would be a complete removal of the view or a "devastating" impact on those views, to use the terms referred to in *Tenacity*. The impacts for the units on the middle and lower levels of the adjoining building would also be devastating, but these impacts would be on the "outlook" (eg sky views) because these units have less of an actual "view".

**ITEM 2 (continued)**

The following drawings (east elevation and 3D montage) are provided as an illustration. According to the applicant's levels (RLs) of the proposed additions as shown on the DA plans, and the levels for the adjoining building (provided on the applicant's survey plan submitted with the DA), the proposed level at the underside of the ceiling (RL88.65) of the proposed building and the "gutter" ie ceiling level of the adjoining building at No 1 Aeolus Ave (from RL87.65 1 to RL88.51) are very similar. The proposed building adjoining No 1 Aeolus Ave would block the views from the adjoining building as shown below.



*The **fourth step** is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*



**ITEM 2 (continued)**

Assessment Officer's Comment: The proposal is considered to be “unreasonable” for two reasons – firstly, the height of the building (up to 12.12m) immediately adjoining the residential flats to the east significantly exceeds (by up to 4.12m ie over 50% above the SHSEPP control) the maximum height limit for this type of development as prescribed in the SHSEPP (which is 8m). Secondly, it is considered that a more skilful design could be achieved for this development.

It is noted that full copies of the submissions have been provided to the applicant during the DA process to enable them to address the issues of concern, however, as discussed below, no significant design amendments have been made in response (other than lowering of the roof of the building closest to the eastern boundary – which has not addressed the “height” of the building which is measured to the ceiling under the SHSEPP).

Conclusion re View Impacts: The view impacts of the current design are considered unacceptable. Although the views are obscured district views, and are across a side boundary which are recognised as being more difficult to protect, they are still highly valued by property owners in this location, and the design as proposed would result in a complete removal of those views. Most importantly, the building causing the view impacts substantially exceeds the height controls (in the SHSEPP), and there are design solutions which could be undertaken which would preserve the views at least to a reasonable level. On balance, the view impacts are considered unacceptable and is considered to be a valid reason for refusal.

**E. Landscaping Provision.** *A number of concerns on the subject of landscaping provision has been made in the submissions, including that the proposal does not comply with the landscaping requirements of the SHSEPP (deficient by 428m<sup>2</sup>), the landscaping is inadequate to ameliorate the excessive bulk of the building, a strip (eg 3m wide) should be provided along the property boundaries which should include small shrubs and canopy trees, and inadequate landscaping is proposed on the Aeolus Ave frontage.*

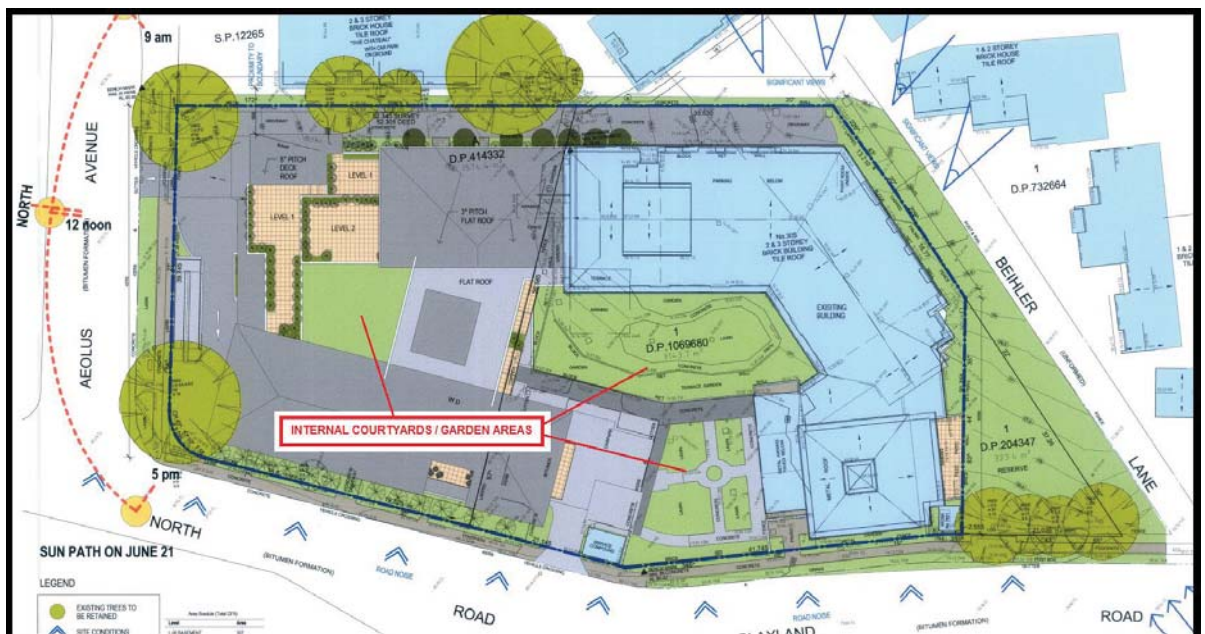
Comment: It is considered that the landscaping provision is inadequate for the proposed development. Although the landscaped area along the driveway adjacent to the eastern side of the building has been increased (to provide a 2m wide strip), the overall amount of landscaping provided for the site remains deficient when assessed in terms of the SHSEPP requirement.

A review of the plans (reduced-size site plan provided below) shows that the main areas of landscaped space (eg outdoor courtyards etc) are only provided within the central space surrounded by the existing buildings, and an area between the two proposed new buildings, with the rest of the landscaped space being in strips within setback areas or adjacent to driveways. This creates the feeling that the

**ITEM 2 (continued)**

site is excessively dominated by built structures and hard surfaces (ie buildings, driveways and paths etc) with inadequate landscaping for residents.

It is considered that an increased amount of landscaping should be provided, to at least meet the numerical requirement of the SHSEPP. It is recommended that this could be achieved by increasing the landscaped setback of the proposed western building to North Road (which would also address concerns regarding the front setbacks to North Road), and also the setbacks of the proposed addition to the eastern boundary (which would also address bulk and scale and amenity impacts on the adjoining residential flat buildings at 1 and 3 Aeolus Ave), or a general reduction in the size of the proposed buildings.

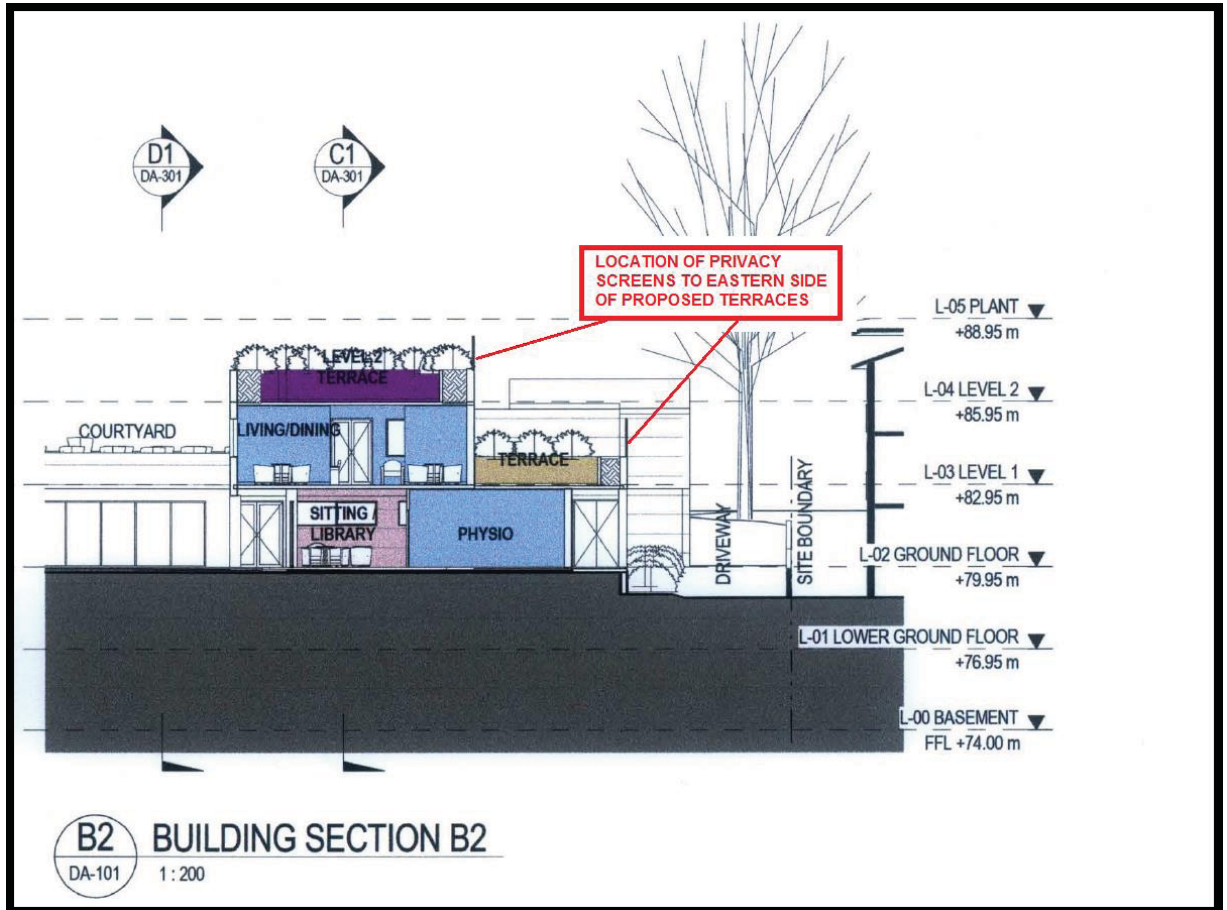


**F. Visual privacy impacts.** Concerns have been raised that the proposal will have a range of privacy impacts on neighbours, including the elevated walkway (from the loading area to the building) will result in potential overlooking, the existing and proposed windows of the nursing home will allow overlooking into rooms of adjoining residences in particular bedrooms and balconies.

Comment: These issues of concern have been partly addressed in the amended plans. The eastern side of the external terraces (at level 1 and 2), as well as the ground floor walkway and ramp which runs along the eastern side of the proposed additions, have been provided with privacy screens which would address the issue of privacy to a reasonable extent considering the nature of use of these areas. Also, as suggested in the submissions, restrictions on the hours of use of the outdoor terrace areas could be imposed via conditions of consent which would ensure noise and privacy is maintained to a reasonable degree.

**ITEM 2 (continued)**

A detailed plan showing the location of the privacy screens appears below.



However, there are a number of resident bedrooms as well as internal communal spaces (eg quiet sitting rooms, living/dining spaces), and also service rooms for the residents such as physio and kitchen which may cause privacy impacts on the property to the east.

It is considered that design amendments to these internal rooms should be considered to address potential privacy impacts, which could include replacement/re-location of windows (eg to other elevations where possible), adjustment to size and type of windows (narrower windows or “highlight” windows) or external louvred privacy screens to the bedrooms.

**G. Noise impacts – from residents/employees.** *A number of concerns have been raised regarding noise from the residents and employees of the proposal, including existing noise from radios in the kitchens and noise from delivery vehicles occurs early in the morning and is likely to increase as a result of the proposal, and the large sitting rooms and external terraces do not provide adequate screening.*

**ITEM 2 (continued)**

Comment: A Noise Impact Assessment has been submitted with the DA, which has been considered by Council's Environmental Health Officer (see also Referrals section below). Council's Environmental Health Officer advises that noise from plant and equipment will be the main noise issue from the site, and these issues can be addressed with appropriate placement of the equipment and also the use of screening if necessary. The new loading dock, being enclosed, should provide better noise protection from unloading of delivery vehicles than may currently be the case.

The Environmental Health Officer has provided a range of conditions to address potential noise impacts (if Council decides to approve the DA) – including standard conditions, which could be imposed to address the on-going use of the premises:

- The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.
- The operation of any plant or machinery installed on the premises must not cause:
  - (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at the most affected noise sensitive location in the vicinity. Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the New South Wales Industrial Noise Policy (EPA, 2000).
  - (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*.
  - (c) The transmission of vibration to any place of different occupancy.
- The noise level emitted from the premises must not exceed the project specific noise levels specified in the noise impact assessment report submitted with the development application.

**H. Traffic and Parking impacts.** *A number of issues of concern regarding traffic and parking have been raised, including general concerns regarding increased traffic and related noise, the high demand for on-street parking which will be made worse by the development, and the development proposes inadequate parking.*



**ITEM 2 (continued)**

Comment: The development more than complies with the on-site parking requirements prescribed in the SHSEPP – in particular the development requires 24 on-site parking spaces (plus 1 ambulance space) and the development provides 28 spaces (plus 1 ambulance space). Compliance with the SHSEPP should ensure that most of the parking needs of the development can be provided on-site without excessive on-street parking being generated.

In terms of traffic, as discussed in the Referrals Section, the RMS have significant concerns regarding the driveway from North Road.

- I. Construction Impacts.** *Concerns are raised that construction noise and other impacts (eg dust emissions etc) from such a large development will occur for a long period (eg 1 year or more) which would be unreasonable for neighbouring residents.*

Comment: Although such concerns are understandable, they would not form valid grounds for refusal (in and of themselves) given their temporary nature only during the construction phase of the development. Many of the particular impacts can be addressed via standard conditions of consent including hours of construction as well as soil erosion and sediment control.

- J. Pedestrian footpath restrictions.** *A submission was received from the NSW Guide Dogs Association, requesting (on behalf of a client) that pedestrian footpaths surrounding the site be kept clear of construction equipment and materials.*

Comment: This could be imposed as a standard condition of consent if Council decides to approve the DA.

- K. Property devaluation/financial impacts.** *Concerns have been raised that the development will cause property devaluation for neighbouring property owners.*

Comment: Development Application applicants have a right, under the provisions of the Environmental Planning and Assessment Act, 1979, to apply for developments that achieve the aim of orderly and economic use and development of land. Concerns about possible decreases in surrounding property values do not constitute a valid town planning consideration. This position has been reinforced by planning and development decisions in the Land and Environment Court.

**ITEM 2 (continued)**

However, the design as presented raises a number of valid town planning issues of concern as discussed throughout this report, and it is recommended that the applicant be given the opportunity to amend the design to address these issues before any approval is granted.

Re-Notification of Amended Plans

When the amended plans were received for this development (see Background above), the adjoining owners and previous objectors were re-notified for a period from 1 to 18 March 2013. A further six (6) submissions were received. One of these was a further detailed submission from Kerry Gordon Planning on behalf of the body corporate for 1 Aeolus Ave (to the east), whilst the other submissions were from individual unit owners within that adjoining property (which stated that they support the submission made from Kerry Gordon Planning on their behalf, but which made no specific additional points of objection).

The additional submission from Kerry Gordon Planning is lengthy, and is held as **ATTACHMENT 2 - CIRCULATED UNDER SEPARATE COVER** to this report.

**L. *Previous concerns not addressed.*** *Concerns are raised that the amended plans do not properly address the previous concerns (“tokenistic at best”), and the amendments do nothing to address the previous concerns with the proposal. These include unacceptable visual bulk due to excessive height, inadequate provision of landscaping, loss of visual and acoustic privacy, loss of outlook and views, shadow impact, inappropriate design which maximises impacts on No 1 Aeolus Ave, and overdevelopment.*

Comment: Much of the above submission re-iterates the issues of concern raised in the previous submissions received, which are discussed in the preceding section (above).

It is agreed that the proposal remains unacceptable in terms of excessive height, inadequate landscaped area, excessive bulk and scale and inadequate setbacks (to North Road). Also, significant concerns are raised in terms of the vehicle driveway to North Road.

It is noted that the applicant has been provided with copies of the submissions received for this development (the original submissions and the submissions following re-notification), and also the correspondence from the RMS in which the issues of concern are raised, to inform the applicant and give an opportunity to address the issues.

**ITEM 2 (continued)****8. Policy Implications****Relevant Provisions of Environmental Planning Instruments etc:****(a) Ryde Local Environmental Plan 2010**Zoning

Under Ryde LEP 2010, the property is zoned R2 Low Density Residential. The proposed development is defined as a “Residential Care Facility” (which has the same definition under Ryde LEP 2010 and the SHSEPP), which is permissible with the consent of Council. The definition of “Residential Care Facility” is:

***residential care facility** means accommodation for seniors or people with a disability that includes:*

- (a) meals and cleaning services, and*
  - (b) personal care or nursing care, or both, and*
  - (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,*
- but does not include a dwelling, hostel, hospital or psychiatric facility.*

Mandatory Provisions

There are a number of Mandatory Provisions in Ryde LEP 2010 that affect this development, which are discussed as follows.

Clause 4.3(2) – Height

This clause states that “the height of a building on any land is not to exceed the maximum height shown for the land on the “Height of Buildings Map” in Ryde LEP 2010 (ie 9.5m for this land).

The height of the development is 12.12m at the highest point (ie at the southern end of the building on the eastern side of the site), which does not comply with Ryde LEP 2010. An objection under SEPP 1 has been submitted in relation to this matter, which is discussed later in this report.

Clause 4.4(2) – Floor Space Ratio (FSR)

This clause states that “the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map in Ryde LEP 2010.” – which is 0.5:1 for this land.

Clause 4.4A states that “despite clause 4.4 (2), the maximum floor space ratio shown for a building on land in Zone R2 Low Density Residential on the Floor Space Ratio map only applies to development for the purposes of a dwelling house or dual occupancy (attached)”. Therefore the floor space ratio controls of Ryde LEP 2010 do not apply to this development.

**ITEM 2 (continued)**

Note that there is a Floor Space Ratio (FSR) control in the SHSEPP, as discussed later in this report.

**Clause 5.10 – Heritage Conservation**

This clause requires (inter alia) Council to consider the impacts of development proposals on the heritage significance of nearby heritage items (listed under Ryde LEP 2010). The site is not located in close proximity to any buildings listed as heritage items, however North Road itself (formerly known as “Great North Road” from Bedlam Point (Gladesville) to Eastwood) is listed as a Heritage Item under Ryde LEP 2010 and therefore this clause technically applies.

North Road is a State Heritage Item listed under Ryde LEP 2010, and was constructed between 1826 and 1836 as a convict-built road to link Sydney to Newcastle and the Hunter Valley. Much of the original road alignment remains in use today (including the location of the subject site), though the original road surface is buried beneath the current (bitumen) surface.

The proposed development is considered satisfactory in terms of Clause 5.10 of Ryde LEP 2010 because it does not involve any work (eg new driveway or any other form of road opening in North Road) that would require a Heritage Assessment, and no such assessment has been submitted with the DA.

If the proposal is amended in terms of new driveway location or any works to the road surface (or footpath etc), then appropriate archaeological supervision during the construction stage should be required as a condition of consent.

**(b) Relevant State Environmental Planning Policies (SEPPs)****State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

This State Environmental Planning Policy (referred to as SHSEPP throughout this report) applies to the proposed development. An assessment of the proposal in terms of the relevant clauses of the SHSEPP appears in following Section of this report.

**Clause 4 – Land to which the Policy applies**

The SHSEPP applies to land in NSW that is zoned primarily for urban purposes and which permits:

- (i) dwelling-houses,*
- (ii) residential flat buildings,*
- (iii) hospitals,*

**ITEM 2 (continued)**

- (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, or*
- (b) the land is being used for the purposes of an existing registered club*

**Comment**

The subject site is zoned R2 – Low Density Residential which permits dwelling houses. As such the proposed form of housing is permissible under the SHSEPP.

**Clause 18 – Restriction on occupation of seniors housing allowed**

This clause provides that development allowed by the SHSEPP may be carried out only for *seniors or people who have a disability, people who live within the same household with seniors or people who have a disability, or staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

This clause further provides that “Council must not consent to a DA unless:

- (a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to in sub clause (1) may occupy any accommodation to which the application relates, and*
- (b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, limiting the use of any accommodation to which the application relates to the kinds of people referred to in sub clause (1).*

**Comment**

These matters could be addressed via conditions of consent if Council decides to approve the DA.

**Clause 24 – Site Compatibility certificates required for certain DAs**

This clause does not apply to DAs if the proposed development is permissible with consent under the zoning of another environmental planning instrument. The development is permissible with consent under the R2 Low Density zone (within Ryde LEP 2010) and therefore a Site Compatibility Certificate is not required.

**Clause 26 – Location and access to facilities**

This clause states (in sub-clause (1)) that Council must be satisfied that residents of the proposed development will have suitable access to shops, bank service providers and other retail and commercial services that residents may reasonably require; community services and recreational facilities, and the practice of a general medical practitioner.



**ITEM 2 (continued)**

Further, sub-clause (2) specifies the various access requirements as follows:

(a) *facilities and services to be located at a distance of not more than 400m 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 15m at a time,*
- (ii) *a gradient of no more than 1:10 for a maximum length of 5m at a time,*
- (iii) *a gradient of no more than 1:8 for distances of no more than 1.5m at a time, or*

(b) *in the case of a proposed development on land in a local government area within the Sydney Statistical Division there is a public transport service available to the residents who will occupy the proposed development:*

- (i) *that is located at a distance of not more than 400m from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*
- (ii) *that will take those residents to a place that is located at a distance of not more than 400m from the facilities and services referred to in subclause (1), and*
- (iii) *that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),*

*and the gradient along the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3).*

(3) *For the purposes of subclause (2) (b) and (c), the overall average gradient along a pathway from the site of the proposed development to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) is to be 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 15m at a time,*
- (ii) *a gradient of no more than 1:10 for a maximum length of 5m at a time,*
- (iii) *a gradient of no more than 1:8 for distances of no more than 1.5m at a time.*

**ITEM 2 (continued)**Comment

The proposal complies with the above requirements for location and access to facilities. In particular, there is a bus stop on Blaxland Road directly in front of the subject site (less than 50m south of the pedestrian entrance to the site), and NSW State Transit bus services operate from this bus stop in compliance with sub-clause 2(b) above.

**Clause 27 – Bush Fire Prone Land**

This clause states that “a consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land identified on a bush fire prone land map certified under section 146 of the Act as “Bush fire prone land—vegetation category 1”, “Bush fire prone land—vegetation category 2” or “Bush fire prone land—vegetation buffer” unless the consent authority is satisfied that the development complies with the requirements of the document titled *Planning for Bush Fire Protection*, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2006.

Comment

The site is not located within any of these categories of Bush Fire Prone Land and hence clause 27 of the SHSEPP does not apply to this DA.

**Clause 28 – Water and Sewer**

This clause states that Council must be satisfied that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.

Comment

The applicant has submitted a report indicating that water and sewer is currently available to the site. If Council decides to approve the DA, a condition could be imposed requiring a Section 73 Compliance Certificate under the Sydney Water Act 1994 to be obtained from Sydney Water Corporation prior to occupation of the development.

**Clause 29 – Site Compatibility criteria for development applications to which clause 24 does not apply**

This clause requires Council to consider the criteria referred in clause 25(5)(b)(i), (iii) and (v) if a site compatibility certificate is not required under clause 24 of the SHSEPP.

## ITEM 2 (continued)

The matters to be considered under Clause 25 (5) (b) (i), (iii) & (v) are:

- 25 (5) (b) *the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:*
- (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 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,*
  - (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,*

### Comment




The subject site is not affected by any site constraints such as heritage, flooding or subsidence. The site is within a residential zone and is surrounded by other residential properties. However there are concerns regarding the impact that the bulk, scale, built form and character of the proposed development, as discussed throughout this report.

## Part 3 – Design Requirements



Part 3 of the SHSEPP contains various Design Requirements which are discussed in the Table below:

SEPP Provisions	Assessment	Comply
Cl. 30 - Site Analysis: A Site Analysis Diagram is required.	The submitted architectural drawings include a Site Analysis drawing.	Yes
Cl. 31 In fill self-care housing must consider the provisions of the Senior Living Policy: Urban Design Guidelines for Infill Development	See <b>Attachment 4</b> to this report for Table of assessment of this proposal in terms of the provisions of the Senior Living Policy.	Yes
Cl.32 Design of residential development – must not consent unless Council is satisfied that the proposed development demonstrates that regard has been given to the principles in Division 2	Consideration had been given to the principles as set out in this table	Yes

**ITEM 2 (continued)**

<b>SEPP Provisions</b>	<b>Assessment</b>	<b>Comply</b>
(ie clauses 33-39 below)		
<p>Cl. 33 Neighbourhood amenity &amp; Streetscape: (a) recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area, and</p>	<p>The current character of this immediate location is highly varied – including:</p> <ul style="list-style-type: none"> <li>• a large site containing 2 x 2-3 storey residential flat buildings with grade parking immediately to the east (1-3 Aeolus Ave): </li> <li>• RMS Motor Registry immediately to the west (across North Rd and corner of Blaxland Road): </li> <li>• An older-style 2 storey townhouse development to the south (291 Blaxland Road): </li> </ul>	<p>Concerns re height, bulk and scale, and street setbacks. See discussion below.</p>

**ITEM 2 (continued)**

SEPP Provisions	Assessment	Comply
	<ul style="list-style-type: none"> <li>low density residential development (mostly single dwellings) to the west, north and east (in Blaxland Road, North Road and Aeolus Ave):  </li> <li>Ryde TAFE further to the south, western side of Blaxland Road:  </li> </ul> <p>There are issues of concern re the height, bulk and scale of the development, when viewed from the west (North Road) and also the east (adjoining residential flat development). See below and Submissions section for more detailed discussion.</p>	
<p>(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</p>	<p>The site is not located within a Heritage Conservation Area or in the vicinity of any buildings that are heritage items under Ryde LEP 2010. North Road is listed as a heritage item under Ryde LEP 2010 – refer to discussion under Ryde LEP 2010 (earlier in report).</p>	



**ITEM 2 (continued)**

<b>SEPP Provisions</b>	<b>Assessment</b>	<b>Comply</b>
(c) maintain reasonable neighbourhood amenity and appropriate residential character by: <ul style="list-style-type: none"> <li>(i) providing building setbacks to reduce bulk and overshadowing, and</li> <li>(ii) using building form and siting that relates to the site's land form, &amp;</li> <li>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, &amp;</li> <li>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, &amp;</li> </ul>	As noted above, there are issues of concern re the height, bulk and scale of the development, when viewed from the west (North Road) and also the east (adjoining residential flat development). See below and Submissions section for more detailed discussion.	
(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, &	There are issues of concern re the setback of the development to North Road in terms of height, bulk and scale. See below for detailed discussion.	
(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, &	A number of trees are affected by the proposal and are to be removed and 2 trees that contribute to the Aeolus Ave character are to be retained.	
(f) retain, wherever reasonable, major existing trees, &	A landscaping plan has been submitted that proposes tree and shrub planting on the North Rd frontage & internally, while others are to be transplanted & used elsewhere on site.	

**ITEM 2 (continued)**

<b>SEPP Provisions</b>	<b>Assessment</b>	<b>Comply</b>
(g) be designed so that no building is constructed in a riparian zone.	Not located in a riparian zone.	
Cl. 34 Visual and acoustic privacy:  The development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, & (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	Issues of concern have been raised in submissions received from neighbours – as discussed in the Submissions section of this report.  In summary – the main area of concern re visual privacy is on the eastern side of the development, where the site adjoins a site occupied by residential flat buildings.	See discussion below and in Submission s section of this report.
Cl. 35 Solar access and design for climate:  The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, & (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	Shadow plans have been submitted in support of the proposal. Much of the morning shadow falls onto the adjoining roadways or open space. The adjoining residential flats to the east are not affected by overshadowing until mid afternoon & receive the required amount of sunlight. Most of the rooms face east or west thus receiving good sunlight.  Resident's access to sunlight is maximised by the provision of a number of north facing terraces as well as common living areas.	Yes

**ITEM 2 (continued)**

<b>SEPP Provisions</b>	<b>Assessment</b>	<b>Comply</b>
<p>Cl.36 Stormwater:</p> <p>The proposed development should:</p> <p>(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths &amp; minimising paved areas, &amp;</p> <p>(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.</p>	<p>Council's Consultant Development Engineer has advised that the submitted stormwater drainage plans generally comply with Council's requirements for stormwater drainage (Part 8.2 DCP 2010)</p>	<p>Yes</p>
<p>Cl. 37 Crime prevention:</p> <p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <p>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling &amp; general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, &amp;</p> <p>(b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, &amp;</p>	<p>Access to development is via a lobby off the Aeolus Ave frontage that allows surveillance of the public areas. CCTV will be installed to provide further surveillance means. Access to the site is not generally otherwise available thus ensuring the safety of residents. Barriers within the development are designed to control the internal movement of residents thus safeguarding their safety</p>	<p>Yes</p>

**ITEM 2 (continued)**

<b>SEPP Provisions</b>	<b>Assessment</b>	<b>Comply</b>
(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.		
Cl 38 Accessibility:  The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.	Bus facilities are available in Blaxland Rd close to the development. Traffic lights provide safe passage while crossing the road. Parking areas are separate to pedestrian paths thus reducing pedestrian & vehicle conflict.  However, significant concerns have been raised by the NSW RMS regarding the vehicle driveway onto North Road and in particular its proximity to the Blaxland Road intersection. See discussion below.	Concerns re driveway access. See discussion below and in the Referrals Section of this report.
Cl.39 Waste management:  The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities	Council Waste Officer indicates the proposed arrangements are satisfactory.	Yes

Discussion re Issues of Concern in Table Above
Height, Bulk and Scale

Concerns regarding bulk and scale are raised in relation to two particular locations in the proposal – the proposed additions on the eastern side of the site (adjoining 1 and 3 Aeolus Ave), and also the new building on the western side fronting North Road.

## ITEM 2 (continued)

The proposed additions on the eastern side do provide a reasonable amount of articulation (eg indentations along the building length as well as variations in floor plates on each level) however the major issue of concern with these additions is its height. Although the roof has been lowered (to a 3° roof pitch), the height measured from ground level to the topmost ceiling remains at 12.12m or 4 storeys which is excessive and would cause unreasonable impacts on the immediate neighbour to the east. As noted previously, the adjoining development is an older-style residential flat development that should not be seen as an example to follow in current planning controls (ie the R2 zone which does not allow such development).

The following drawing (east elevation) illustrates the appearance of the building from the adjoining property to the east.



## Setbacks

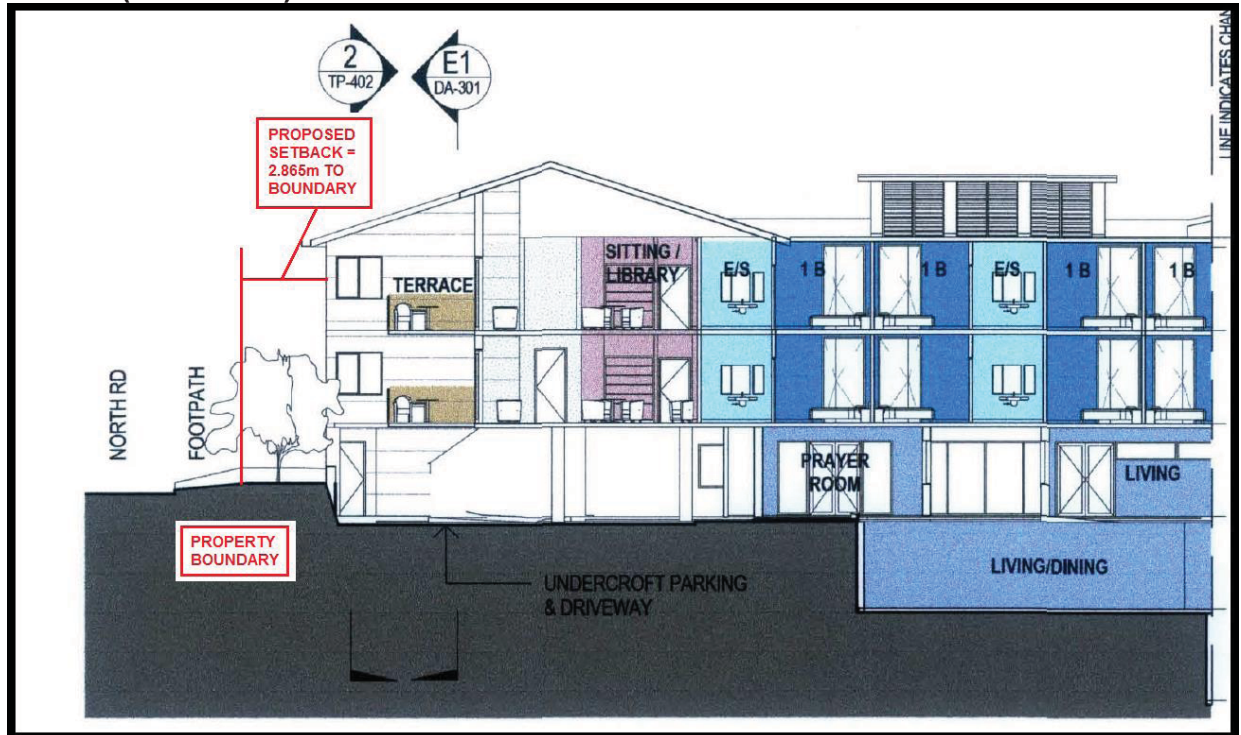
In addition to bulk and scale issues above, concerns are raised regarding the setbacks to North Road of the building on the western side. The DA plans show that this building will be 2 storeys high above a partly excavated at-grade parking (ceiling height up to 7.97m at highest point), but with a setback of only 2.865m to North Road near the intersection of Blaxland Road.

Although the building appears to have been designed as part of a development that has its main front entry to Aeolus Ave (which in effect makes the frontage to North Road a “secondary setback”), the proposed setback to North Road is considered to be inadequate having regard to the height and length of the building. In this regard, it is noted that the proposed building has a length of 44m along the North Road frontage, with a (ceiling) height of up to 7.97m but with a setback of only 2.865m to North Road. This would create an unacceptable result in terms of bulk and scale when viewed from North Road.

The following architectural drawings (section A1 and west elevation) illustrates the appearance of the proposed building to North Road.



**ITEM 2 (continued)**



Visual and Acoustic Privacy

Refer to the Submissions section of this report for discussion on Visual and Acoustic Privacy issues.

Driveway Access

As discussed in the Referrals Section of this report, the RMS advises that the proposed driveway access from North Road is unsatisfactory, and therefore the proposal is unacceptable in terms of Clause 38 of the SHSEPP.

**ITEM 2 (continued)**
**Part 4 – Development Standards to be complied with**

Part 4 (Clause 40) of the SHSEPP contains various Development Standards which are discussed in the Table below. It is noted that this Part of the SHSEPP also contains other controls for hostels and self-contained dwellings which are not relevant to this application.

<b>SEPP Provisions</b>	<b>Proposal</b>	<b>Comply</b>
Clause 40 Development Standards – minimum sizes & building height		
(1) <b>General</b> 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	Noted, assessment in terms of this clause appears as below and SEPP 1 objection submitted to request variation to the height controls	
(2) Site size: Min 1,000m <sup>2</sup>	Site area = 5458.6m <sup>2</sup>	Yes
(3) Site frontage: Min 20m	Blaxland Rd 41.745m, Aeolus Ave 39.745m, North Rd 57.07m	Yes
(4) Height where residential flats not permitted: (a) 8m or less.	10.62m-12.12m for the proposed addition to building adjacent to eastern boundary	No SEPP 1 objection submitted
(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	3 storeys adjacent to western boundary (North Road) 4 storeys adjacent to eastern boundary	No SEPP 1 objection submitted
(c) a building located in the rear 25% area of the site must not exceed 1 storey in height	Aeolus Ave is regarded as the “frontage” as this is where the new entry foyer is located, as well as the main pedestrian and vehicle entrance to the site.  Although no new buildings are proposed in the rear 25% of the	No SEPP 1 objection submitted

**ITEM 2 (continued)**

SEPP Provisions	Proposal	Comply
	site (based on Aeolus Ave being the “frontage”) – the existing buildings in this location are 2 storeys above at-grade parking, which technically does not comply with this control.	

**Part 7 – Development Standards that cannot be used as grounds to refuse consent**

Part 7 (Clause 48) of the SHSEPP contains development standards for Residential Care Facilities that cannot be used as grounds to refuse consent if the development complies with those standards. It is noted that this Part of the SHSEPP also contains development standards that cannot be used as grounds to refuse consent – for both hostels (clause 49) and self-contained dwellings (clause 50), but neither of these clauses apply to the subject development.

Assessment of the development in terms of Clause 48 appears in the Table below.

SEPP Provisions	Assessment	Comply
Cl 48 - Standards that cannot be used to refuse development consent for residential care facilities		
(a) <b>Building height:</b> if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys).  <b>Note:</b> In accordance with the SHSEPP, <b>height</b> 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.	According to the SHSEPP height definition (see Note in the column to the left):  The eastern building (addition to existing) has a height ranging from 10.62m-12.12m adjacent to eastern boundary and therefore height could be used as a ground for refusal.  The western building (new building on western side adjacent to North Road) has a height ranging from 7.15m to 7.97m which complies with the SHSEPP.	No
(b) <b>Density and scale:</b> if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less	Applicant indicates total gross floor area (GFA) for the development is 5458m <sup>2</sup> which provides a FSR of 1:1.	Yes

**ITEM 2 (continued)**

SEPP Provisions	Assessment	Comply
(c) <u>Landscaped Area</u> : if a minimum of 25m <sup>2</sup> of landscaped area per residential care facility bed is provided,	112 beds x 25m <sup>2</sup> per bed requires 2800m <sup>2</sup> . As a result of amendments to the proposal (to provide a slight increase to the landscaping along the driveway) the total landscaping is now 2390m <sup>2</sup> . Therefore lack of landscaping could be used as ground for refusal.	No
(d) <u>Parking for residents and visitors</u> : if at least the following is provided: (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and (iii) 1 parking space suitable for an ambulance.	Parking required is: 1/10 beds = 11.2 spaces 1/2 staff = 12.5 spaces Total required = 23.7 (say 24) spaces PLUS Ambulance = 1 space  Parking provided = 28 car spaces and 1 designated ambulance space	Yes

**State Environmental Planning Policy No 1 – Development Standards**

An objection under State Environmental Planning Policy No 1 (“SEPP 1”) has been submitted with the DA, in relation to the height controls contained in Clause 40(4)(a), (b) and (c) of the SHSEPP. In summary, those controls prescribe:

- Clause 40(4)(a): A maximum height of 8m (proposal is 12.12m at the highest point of the additions, which occurs at the southern end of the extensions to the building on the eastern side)
- Clause 40(4)(b): A maximum height of 2 storeys (proposal is up to 4 storeys at the same point as above)
- Clause 40(4)(c): A requirement that a building located in the rear 25% area of the site must not exceed 1 storey in height (the “front” of the site is taken to be Aeolus Ave, so the building in the rear 25% is 2 storeys above basement – however it is noted that this building is existing).

**ITEM 2 (continued)**

The applicant's SEPP 1 objection is a lengthy document, so for the Committee's consideration it is provided in full at **ATTACHMENT 5**.

Consideration of Applicant's SEPP 1 Objection

It is important to consider the applicant's SEPP 1 objection in light of the Tests established by the Land and Environment Court for this subject.

In *Winten Property Group Pty Ltd v North Sydney Council [2001] 130 LGERA 79*, Justice Lloyd posed 5 questions to be addressed in SEPP 1 objections. These questions appear as follows:

1. *Is the planning control in question a development standard?*
2. *If so, what is the underlying object or purpose of the standard?*
3. *Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in Sections 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?*
4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)*
5. *Is the objection well founded?*

In the decision of *Wehbe v Pittwater Council [2007] NSWLEC 827*, Chief Justice Preston re-phrased the above test with a new test as follows. The new test, together with a brief comment on each, appears as follows:

1. *The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*



**ITEM 2 (continued)**

Comment: Compliance with the development standard would not be unreasonable and unnecessary for the building in question. The main basis for the applicant's SEPP 1 objection appears to be that the proposal replicates the height of the adjoining residential flat buildings (1 and 3 Aeolus Ave). This is not considered to be reasonable because that adjoining development is an older-style residential flat building which is not permissible under the zoning of that property or the subject property. It should not be seen as an example to replicate on the subject site in terms of height. Accordingly, it is not considered that the SEPP 1 objection is well-founded.

2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Sections 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and*

The aims of SEPP 1 relate to provision of flexibility in the application of development standards. On this site it may be considered appropriate to apply some flexibility to the SHSEPP height controls, but not to the extent proposed in this DA (ie a variation of over 50% above the 8m height control (ie up to 12.12m proposed); and twice the maximum 2 storeys (ie 4 storeys proposed).

3. *It is also important to consider:*
  - a. *whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
  - b. *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

Non-compliance with the development standard does not raise any matter for significance for State or Regional planning. There is considered to be public benefit for maintaining the planning controls because the proposed non-compliances with the controls in this case cause unacceptable impacts on the immediate neighbours.

Chief Justice Preston then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

**ITEM 2 (continued)**

3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: As noted above, it is not considered that the applicant's SEPP 1 objection is well-founded. The extent of the non-compliance is excessive and appears to be based on replicating an older-style development which would not be permissible or supported under current planning controls.

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

From 1 July 2009 this plan is taken to be a State Environmental Planning Policy (see clause 120 of Schedule 6 to the Environmental Planning & Assessment Act 1979). The site is located within the designated hydrological catchment of Sydney Harbour and therefore is subject to the provisions of the above SREP. However, the site is not located on the foreshore or adjacent to the waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The objective of improved water quality is satisfied through compliance with the provisions of section 8.1 (Construction Activities) of Council's DCP 2010 and related conditions of consent. The proposed development raises no other issues and otherwise satisfies the aims and objectives of the SREP.

**State Environmental Planning Policy No 55 - Remediation of Land:**Applicant's submission

*The site is not expected to be contaminated given its past use as a nursing home and, before that, as residential dwellings. Accordingly, the site is expected to be suitable for the continued use as a residential care facility.*

*This contention is supported by the accompanying Contamination Assessment report by SMEC Testing Services which has only identified the likely existence of hazardous materials within the buildings, and the possibility of soil contamination from pesticides used for termite treatment.*

**ITEM 2 (continued)**

*The identification and disposal of hazardous materials will be addressed in a Construction Management Plan while soil excavated from the site will be classified to ensure that it is disposed of to a suitably licensed landfill facility.*

*We consider that the above information is sufficient to allow Council to conclude this site is suitable for the intended uses proposed by this application.*

**Assessment Officer's Comment**

Council's Environmental Health Officer has made an assessment of the proposal in terms of Site Contamination issues and advised that the development is satisfactory subject to conditions that could be imposed if Council decides to approve the DA.

**(c) Any draft LEPs**

A Section 65 Certificate enabling the formal exhibition of Draft Local Environmental Plan 2011 was issued by the Department of Planning and Infrastructure on 23 April 2012. The Draft Plan has been placed on public exhibition between 30 May 2012 and 13 July 2012. Under this Draft LEP, the zoning of the property is – R2 Low Density Residential. The proposed development is permissible with consent within this zoning under the Draft LEP.

Draft LEP 2011 was adopted by Council on 12 March 2013 and is waiting gazettal by the Department of Planning and Infrastructure; as such LEP 2011 can be considered certain and imminent.

**(d) The provisions of any Development Control Plan applying to the land****Ryde Development Control Plan 2010**

Whilst most of the provisions of DCP 2010 are over-riden by the SHSEPP in regard to this proposal and site, there are some remaining Parts of DCP 2010 which are assessed as follows

**Part 7.1 – Energy Smart, Waterwise**

This Part of the DCP states that it is over-riden by BASIX requirements for residential developments including "Seniors Housing". The applicant has requested dispensation to the provisions of BASIX on the following basis:

*BASIX is required for all developments which contain new residential dwellings or alterations and additions to a dwelling. A dwelling is defined as 'a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile'.*

**ITEM 2 (continued)**

*We do not consider that the accommodation rooms within the Village meet that definition. Although accommodation rooms will include facilities for making tea/coffee etc, they will not include cooking facilities. All residents will be provided with meals from the Village kitchen.*

*Consequently we are of the view that a BASIX Certificate is not required. We note however that the development will need to satisfy Part J of the Building Code of Australia.*

Comment: Section J of the Building Code of Australia deals with energy efficiency requirements of Class 3 to 9 buildings (ie including this proposal), and it may be deemed that the proposal is satisfactory in terms of energy efficiency requirements in Part 7.1 DCP 2010 subject to compliance with Section J of the BCA. If Council decides to approve this development, then a standard condition that would be imposed will require compliance with the provisions of the BCA, including Section J.

**Part 7.2 – Waste Minimisation and Management**

A Waste Management Plan has been submitted with the DA. If Council decides to approve this DA, a condition of consent can be imposed to ensure compliance with this Waste Management Plan.

**Part 8.2 – Stormwater Management**

Council's Development Engineer has advised that the proposal is satisfactory in terms of this Part of DCP 2010, as noted in the Referrals section of this report.

**Part 9.4 – Fencing**

If Council decides to approve the development, appropriate conditions could be imposed to ensure compliance with this Part of the DCP.

**Section 94 Contributions Plan 2007**

Council's current Section 94 Contributions Plan (adopted 19 December 2007 and as amended 16/3/2011) requires a contribution for the provision of various additional services required as a result of increased development. In relation to the Housing for Seniors or People with a Disability, Council's Section 94 Contributions Plan contains the following note in relation to "Seniors Housing" (ie the predecessor of the current SHSEPP):

*Seniors housing is as defined under clause 10 of State Environmental Planning Policy (Seniors Living) 2004. The occupancy rate and contribution applied relates to self-contained dwellings. The contribution for other forms of*

**ITEM 2 (continued)**

*seniors housing such as hostels will be based on an assessment of the expected demand for public facilities that the development generates.*

Assessing Officer's Comments:

If Council decides to approve the proposed development, a condition of consent would be imposed requiring payment of Section 94 contributions in accordance with Section 94 Contributions Plan 2007.

**10. The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The development as currently submitted is considered to be unsatisfactory in terms of impacts on the built environment as discussed throughout this report.

**11. Suitability of the site for the development**

A review of Council's Land Information mapping system shows that there are no constraints (such as overland stormwater flow, bushfire affectation etc) that would render the land as unsuitable for the proposed development.

**12. The Public Interest**

In the circumstances of the case, it is considered that approval of the proposal in its current form is not in the public interest.

**13. Consultation – Internal and External**

Internal Referrals

**Environmental Health Officer:**

Has undertaken an assessment of the proposal and provided the following comments:

*The application included a report preliminary site assessment from SMEC Testing Services Pty Ltd (Contamination Assessment 7 North Road, North Ryde, Project No 16700/4650VB, Report No. 07/1651, December 2007). The report concludes that there does not appear to have been any previous contaminating activities on the site prior to its current use as a nursing home. It was likely residential before this time. The main issue could be the possibility of the use of asbestos or lead based paint in the current building. There is no reason for the site not to continue to be used as a nursing home.*



**ITEM 2 (continued)**

*The new development provides for separate garbage and recycling rooms in the basement of the existing operating nursing home. An additional garbage room is provided on the ground floor of the new building. This room will hold a carousel compactor to collect general garbage from levels 1 & 2 via a garbage chute. Service lifts will be used to transport recyclables, sanitary and clinical waste.*

*According to the waste management plan waste is transported to a new loading dock located adjacent to the Aeolus Avenue entry driveway. It can either be collected there within the dock or further passed through the dock and onto Aeolus Avenue for collection as currently occurs.*

*Noise from plant and equipment will be the main noise issue from the site. This can be handled with considered placement of the equipment and use of screening if necessary. The new loading dock, being enclosed, should provide better noise protection from unloading of delivery vehicles than may currently be the case.*

*A large new kitchen is proposed for the lower ground floor with smaller kitchens/serveries on the other floors generally near the dining rooms.*

*A new café is to be constructed at the Aeolus Avenue entrance to the facility.*

*A new hairdressing room will be provided on the ground floor.*

*Additional laundry services on each of the floors are also to be provided.*

**RECOMMENDATION:**

*That the Manager Assessment be advised the proposal is satisfactory.*

Comment: Some 28 conditions of consent have been provided by Council's Environmental Health Officer for inclusion in any consent issued by Council, should Council decide to approve the DA.

**Executive Building Surveyor:**

Has undertaken an assessment of the proposal and advised that a review of the details provided would suggest that the requirements of the Building Code of Australia (BCA) can be achieved. Also, has noted that Clause 93 of the Environmental Planning & Assessment Regulation 2000 is not applicable to the proposed development, and has noted that under Clause 94 of the Environmental Planning & Assessment Regulation 2000, it would be necessary to require egress from the existing building to be upgraded to comply with the performance requirements of the BCA.

**ITEM 2 (continued)**

Comment: This matter could be imposed as a condition of consent if Council decides to approve the DA.

**Consultant Landscape Architect:**

Council's Consultant Landscape Architect (Moir Landscape Architecture) has advised in their latest comments that the architectural plans, landscaping plans and civil engineering/drainage plans have been updated to address their previous issues of concern. Therefore, they are satisfied with the level of detail and type of landscaping proposed in the Landscape Plans for this development.

**Waste Management Officer:**

Council's Waste Management Officer has reviewed the proposal and has provided the following comments.

*General comments – The bin storage area is located in the basement carpark. The waste plan states that bins will be transferred to the garbage room on the ground level and then taken to either the loading dock or kerbside on Aeolus Ave for servicing.*

*Issue – Visibility when reversing into the loading dock. Access to service the bins from the kerbside on Aeolus Ave.*

*From a waste perspective there are no objections to approval of this application subject to the following "optional" interrelated conditions:*

- 1. If utilising the loading dock, the entryway off Aeolus Ave will need to be kept clear to enable the waste truck to enter towards the undercroft area and then reverse. A mirror should be placed in a convenient location for the truck to have visibility of our vehicles entering the driveway while the truck is reversing.*
- 2. If bins are to be placed on the kerbside on Aeolus Ave for Council pick-up, No Stopping signage needs to be erected from the driveway to the corner.*

**Development Engineer:**

Council's Consultant Development Engineer has undertaken an assessment of the proposal, and in particular has reviewed and given consideration to the comments and issues of concern raised by the RMS (see external referrals below).

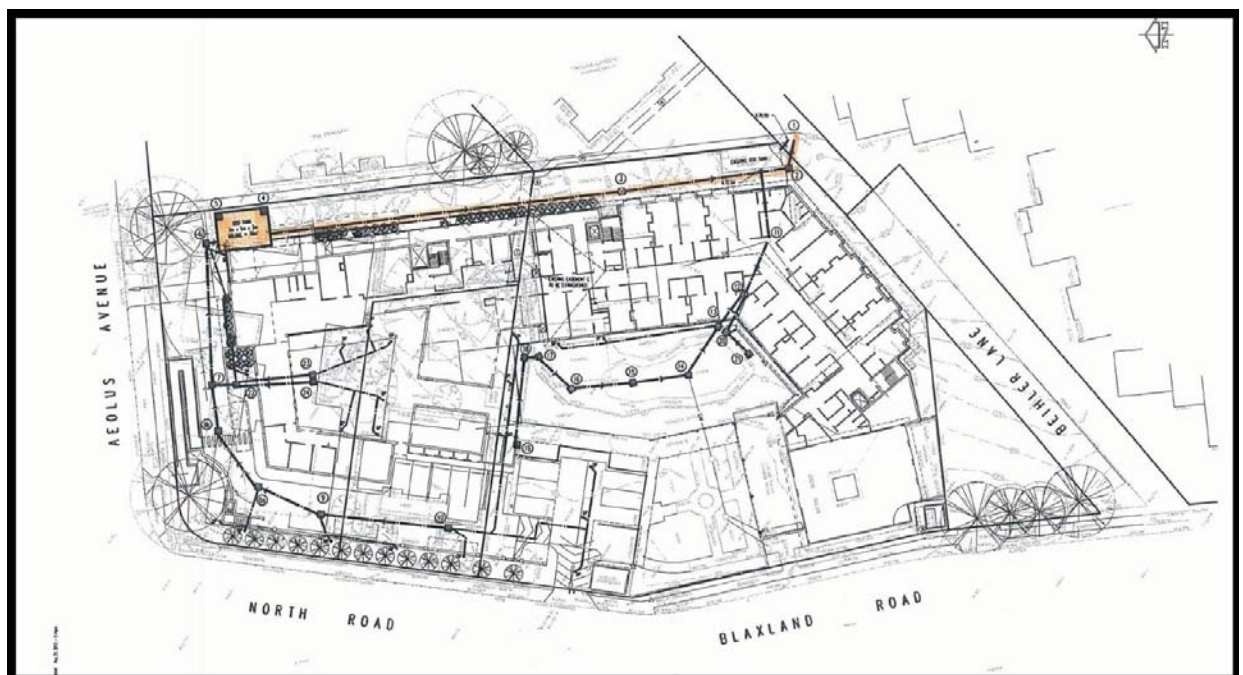
*I have read RMS's comments and I agree with all their points (advisory or not they are still a government authority). We cannot support vehicular ingress and egress on North Road given the location of the proposed crossing being at or near the intersection and within close distance to the traffic lights. Not*

**ITEM 2 (continued)**

*only do we have non-compliance with AS 2890.1:2004, we also have the issue of traffic build up on North Road and within the Visitor Spaces proposed and pedestrian and vehicle safety with the limited sight distance. It is also noted that the vehicular crossing entry off Aeolus Avenue into the subject site indicates that vehicular egress/exit will be onto North Road which is not suitable for a development of this nature. It is therefore advised that if Council is to consider any alternative, it will be to relocate this crossing to be as far as possible (minimum 6metres from the tangent point of the intersection) from the traffic light and influence vehicular ingress/egress off Aeolus Avenue given this is an alterations & additions to a Nursing Home.*

*With respect to stormwater drainage, I have reviewed the stormwater drainage plans prepared by Taylor Thomson Whitting Consulting Engineers and generally the plans comply with Council's DCP 2010, Part 8.2:Stormwater Management. If Development Consent were to be granted, engineering conditions would be imposed.*

Comment: In summary, in terms of stormwater disposal, the proposal involves connecting new underground stormwater pipes (with the provision of an additional on-site detention (OSD) tank) into the existing pipes at the southern end of the site which then connects into existing drainage system in Adventure Park (to the south-east of the subject site). This is consistent with the stormwater disposal arrangements previously approved by Council and constructed to completion as part of the previous development approval for this site (LDA2001/207 issued in November 2001). This will in effect improve the stormwater management of the site by increasing the OSD storage capacity which will reduce the discharge runoff into the trunk drainage system in Adventure Park.

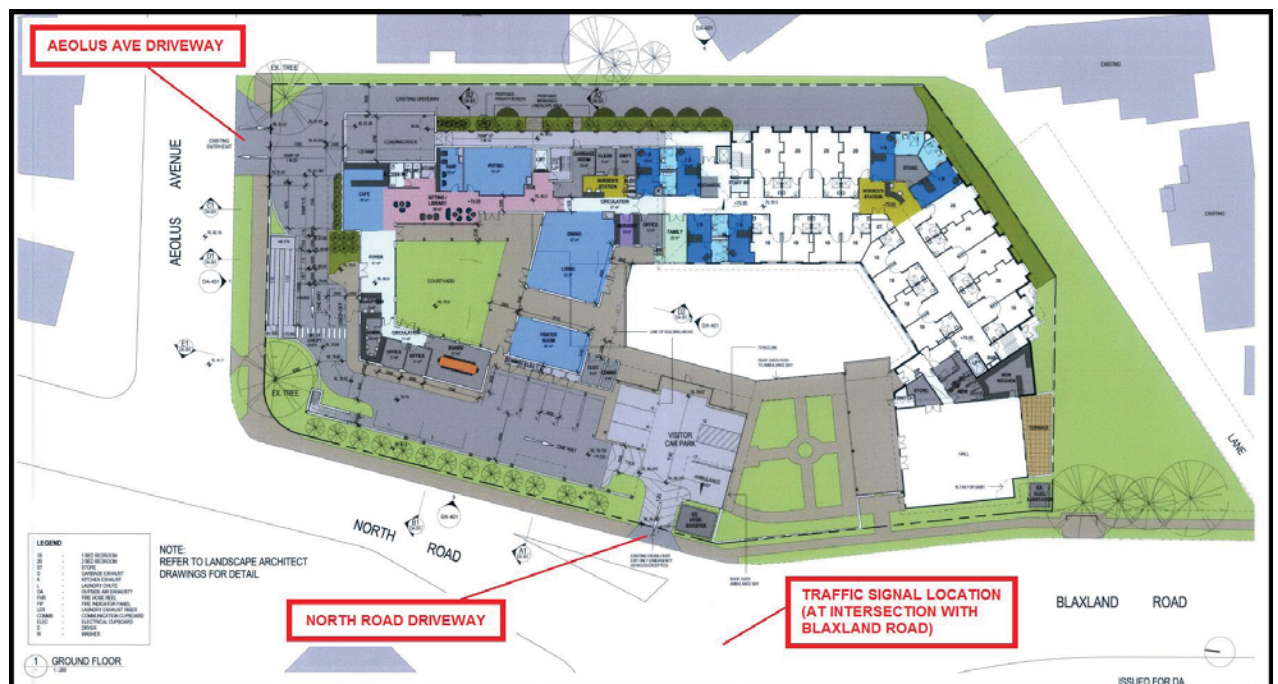


## ITEM 2 (continued)

### External Referrals

#### NSW Roads and Maritime Services (RMS):

The DA was referred to the RMS on 23 July 2012 for their consideration of the existing and proposed vehicle access to Aeolus Ave and North Road – particularly given the proximity of the access from North Road which is in close proximity to a signalised main road intersection (ie intersection with Blaxland Road). This is shown in the following plan extract:



On 4 September 2012, the following comments were received back from the RMS:

*RMS has reviewed the development application and raises road safety and traffic efficiency concerns regarding the proposed driveway off North Road. RMS requests that the plans be modified to remove or relocate the driveway further away from the signalised intersection of Blaxland Road and North Road.*

*If the driveway is to be relocated, then the proposed left-out only movement shall be enforced by installing a concrete median along the centre of North Road.*

*Subject to satisfactory resolution of the above issue, RMS provides the following comments for Council for its consideration in the determination of the development application:*



**ITEM 2 (continued)**

(standard requirements/comments provided including that all vehicles are to enter and leave in a forward direction, landscaping shall not obstruct the view of vehicle and pedestrian sight lines on the proposed site, etc).

The RMS comments were provided to the applicant by letter dated 10 September 2012 for their consideration. The applicant provided the following response (from their Traffic Consultants Colston Budd Hunt and Kafes):

*We note that the driveway from North Road is the existing driveway to the existing nursing home on the site, approved as part of the most recent development. Its use will reduce, as it will become exit only for general traffic, rather than entry/exit as at present. We also note that there is an existing median in North Road which restricts turns from the site to left out.*

*The driveway from North Road is therefore considered to be appropriate because:*

- *the driveway has been previously approved;*
- *it currently operates satisfactorily;*
- *it will become exit only, compared to entry/exit as at present;*
- *its use will reduce with the proposed development; and*
- *the existing median in North Road restricts turns to left out only.*

The applicant's response was referred back to the RMS for their consideration. The RMS then responded on 14 December 2012 as follows:

*RMS has reviewed the additional information submitted and provides the following comments for Council's consideration.*

1. *RMS considers the driveway on North Road to be unsatisfactory for the following reasons:*
  - *This driveway interferes with signal operation, as traffic leaving this driveway would obstruct traffic approaching this signal.*
  - *Furthermore, this driveway would be blocked with just one or two vehicles stopping at the North Road signal approach and hence not suitable for emergency vehicle access.*
  - *This driveway also fails to satisfy AS2890.1:2004 Figure 3.3 Minimum Sight Lines for Pedestrian Safety.*
2. *RMS disagrees with the claim that North Road driveway use will reduce with the proposed development. The proposed access arrangements, car park layout and drop off zone would potentially increase the use of this North Road driveway.*



**ITEM 2 (continued)**

3. *The plans submitted indicate most of the buildings along North Road will be demolished as part of this proposal. Therefore, RMS requests the North Road driveway to be removed. If the proponent demonstrates that this is not feasible, the alternative is to relocate the driveway further away from the signalised intersection of Blaxland Road and North Road. If the driveway is to be relocated, then the proposed left-out only movement shall be enforced by installing a concrete median along the centre of North Road.*

These further comments from the RMS were provided to the applicant for their consideration and to enable them to amend the proposal to address the concerns. In response, the applicant provided legal advice from their solicitors which states (in summary):

- (a) *There is no legal requirement that RMS must provide its consent or concurrence to the proposed development before the Council can approve the development application;*
- (b) *Although there is no legal requirement for the Council to obtain the RMS' advice on the proposed development, the advice RMS has provided to the Council is a matter that the Council is required to consider in assessing the proposed development. However the Council is not legally obliged to refuse the development application because of the RMS' advice.*
- (c) *Based on the material we have reviewed (which has been provided with by your Traffic Engineers, Colston Budd Hunt and Kafes) there are no sound merit grounds for requiring the removal of the existing driveway and its relocation further north along North Road.*

In addition, the applicant (and their representatives) arranged a meeting with the RMS on 11 January 2013 to discuss the proposal and the RMS' comments, and the following are the notes from that meeting between the applicant and the RMS:

1. *RMS agreed that no S138 approval under the Roads Act is required with respect to the North Road driveway, and no changes to the traffic signals are required as a result of the development;*
2. *RMS did not agree that the proposed arrangement, whereby entry movements to the site from the North Road driveway are removed, represents an improvement over the existing situation;*

**ITEM 2 (continued)**

3. *RMS understood why the development could not be amended to provide a driveway further north along North Road;*
4. *RMS suggested that the following options could be explored:*
  - *making the North Road driveway entry only, instead of exit, with one-way circulation from North Road to Aeolus Avenue;*
  - *making the internal circulation two-way (one lane, two-way), so that all vehicles could enter and exit the car park from North Road (except for ambulances);*
  - *retaining the existing car park from North Road, with left in/left out as at present, with no changes to the existing car park at all;*
5. *RMS reiterated that their comments are advisory only and Council can approve the development as proposed if it so chooses (as noted in their 14 December letter, which indicates their comments are for Council's consideration).*

Comment: It is agreed that there is no legal obligation to refuse the DA because of the RMS advice and further, it is agreed that the RMS comments are advisory only and that Council can approve the DA as proposed if it so chooses.

However, the nature of the RMS comments raises significant concerns regarding the merits of the proposal, in particular vehicular safety of the North Road driveway, and it is considered that these concerns (in addition to the other concerns with the development as discussed throughout this report) are very significant in the context of this development which is a housing development for Seniors and People with a Disability.

It is also noted that the applicant has not made any amendments to the design to address these issues of concern regarding the North Road driveway, despite being made fully aware of the issues of concern twice during the assessment of the DA (and in their meeting with RMS Officers who even made suggestions to address the issues).

**14. Critical Dates**

None relevant.

**15. Financial Impact**

Nil.

**ITEM 2 (continued)****16. Other Options**

It is considered that there are 3 options available in the consideration and determination of this application:

**A. Deferral:**

The preferred option is to defer consideration of this DA to enable the applicant to submit amended plans. Although it is considered that the site is suitable for a housing development for seniors or people with a disability under Ryde LEP 2010, the design of the development as currently submitted is unsatisfactory and cannot be supported by Council officers for the reasons and issues enunciated in this report.

Upon receipt of the amended plans, it would be necessary to re-notify neighbours and all previous objectors. A further report would be then prepared for the consideration of the Planning & Environment Committee.

**B. Refusal:**

If it is decided to formally determine the DA at this stage, it is recommended that the DA be refused because of the issues of concern with the current design as discussed throughout this report.

If the DA is to be refused, then the following are suggested as reasons for refusal:

1. The proposed vehicle access (driveway on North Road) is unsatisfactory because it does not comply with AS2890.1:2004, and is likely to cause unacceptable traffic impacts both within the site and the street adjoining.
2. The proposal is unacceptable in terms of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, in particular the height and landscaping requirements contained therein.
3. The proposal would have unacceptable impacts on the adjoining development to the east (known as 1 and 3 Aeolus Ave, Ryde), particularly in terms of height, visual bulk and scale, impacts on views, visual and aural privacy.
4. The proposed setback of the building on the western side to North Road is unacceptable and would cause unacceptable impacts of bulk and scale when viewed from the public domain in North Road.

**ITEM 2 (continued)**

5. In the circumstances of the case, approval of the DA is not in the public interest.

**C. Approval:**

The option of approving the DA is available, but not recommended because of the issues of concern with the current design as discussed throughout this report.

**17. Conclusion**

The proposal has been assessed using the heads of consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979. It is generally considered that the proposed development is an overdevelopment of the site and is unsatisfactory for a number of reasons as discussed in the body of this report, in particular the proposed vehicle access to North Road; the height of the proposed building on the eastern side; the landscaped area, and the front setback of the building on the western side (to North Road).

Although it is generally considered that the site is suitable for housing for seniors/people with a disability, which is permissible under the R2 Low Density Residential zone under Ryde Local Environmental Plan (LEP) 2010, the design of the development as currently submitted is unsatisfactory and cannot be supported by Council officers. The specific issues of concern with the current proposal are as listed in the recommendation below.

It is recommended that the DA be deferred to enable the applicant to submit amended plans and additional information which address these issues. Upon receipt of this information, it will be necessary to re-notify neighbours and all previous objectors. A further report will be prepared to the Planning & Environment Committee after the completion of this process.

ITEM 2 (continued)

ATTACHMENT 1



## Prelodgement Advice

**PROPERTY:** 305 Blaxland Road & 5-7 North Road, Ryde  
San Antonio Da Padova Nursing Home

**MEETING DATE:** 24 May 2012 **TIME:** 1:30pm

**PRELODGMET No:** PRL2012/14

**DEVELOPMENT:** Alterations and additions to the existing nursing home

**ATTENDANCE:** **Council:**  
Glenn Ford, Client Manager  
Adrian Melo, Client Manager  
John Wilson, City Urban Designer

**Proponents:** Peter Manisealeo, San Antonio Da Padova  
Sam Restifa, Restifa & Partners  
George Jovicic, Restifa & Partners  
Julliette Churchill – Woodhead Architects  
Brad Roeleven – City Plan Services  
Scott Brown – Waterman  
Josh Hollis – CBHK

### NOTES FOR PROPONENTS

The purpose of the Prelodgement Panel is to enable you to discuss your proposal with Council officers. Council officers will endeavour to provide information which will enable you to identify issues that must be addressed in any application.

However, the onus remains on the applicant to ensure that all relevant controls and issues are considered prior to the submission of the application. In addition, the quality of the officers' advice will depend on the information you are able to provide at the meeting.

The Prelodgement Panel's advice does NOT constitute a formal assessment of your proposal and at no time should comments of the officers be taken as a guarantee of approval of your proposal.



## ITEM 2 (continued)

## ATTACHMENT 1

### Description of Proposal

The proposal involves demolition of the existing nursing home building on 7 North Road and the existing dwelling house on 5 North Road and construction of a three and four storey extension to provide a 62 bed nursing home.

The new building will join with the existing 54 bed nursing home to provide a total development containing 116 beds. The proposed development will provide ancillary uses (e.g. kitchen, laundry and staff facilities) required to support the operation of the nursing home.

The submitted documents contained a site plan, concept floor plans and elevations, shadow diagrams and a brief assessment and consideration issues relevant to the proposal. The proponents have identified a number of non-compliances including height of the building and a shortfall of landscaping area. The proposal does achieve the maximum floor space ratio and can provide the required number of car parking spaces.

### Zoning and Identified Constraints

The land is zoned R2 under Ryde Local Environmental Plan 2010 (RLEP 2010). The proposed use is described as a “residential care facility” and is permissible in the zone subject to consent.

“Residential care facility” has the same definition in RLEP 2010 as in the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (hereafter Seniors Living SEPP or SLSEPP).

**residential care facility** means accommodation for seniors or people with a disability that includes:

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, but does not include a dwelling, hostel, hospital or psychiatric facility

## MATTERS DISCUSSED AT THE MEETING

### Issues raised by Proponents:

#### 1A. Confirmation of Permissibility

The proposed use is defined as a “residential care facility” and as such is a permissible use in the R2 zone. The Statement of Environmental Effects (SEE) should demonstrate that the use as proposed does meet the terms of the definition by providing a description of the functions and operation of the proposed facility. This should include an explanation why the development does not constitute a “hospital”, “hostel” or “psychiatric facility” recognising that supportive medical care and other services will be required for residents.

The SEE should provide background information on the factors that are driving the form and layout of the development. This should include discussion and supporting documentation on:

**ITEM 2 (continued)**

**ATTACHMENT 1**

- Site character and constraints including surrounding road pattern and topography.
- Character and operation of the existing nursing home and how the new development links to the existing facility.
- Reasons for the development at the scale proposed and why this is an imperative for the design. This is important to enunciate as the physical form does not comply with some controls. While an aim to achieve financial viability is not by itself a justification for variation of planning controls, it is important to identify why the proposed approach is being taken and explain the consequences of an alternative approach that does comply. An explanation of Commonwealth or State Government funding requirements that impinge upon the project should be included.
- The need for the proposed development should be identified. While the impact of our ageing population may be first-hand knowledge to the proponents, there is a need to provide background, context and statistical support to justify the scale of the development proposed. In broad terms, this is required to address the question why the proposed development simply cannot be reduced in size to comply with current planning controls.

Among other things, the above information is necessary to assist in seeking to explain why the bulk and scale of the development (including the floor space ratio) cannot be reduced to meet the applicable height limits and provide the area of landscaping required.

*1B. Relevant Statutory Framework*

The relevant statutory framework for the use includes the Seniors Living SEPP. Where the SLSEPP does not have relevant controls, Council's Local Environmental Plan (Ryde LEP2010) and Development Control Plan (Ryde DCP2010) will apply.

Consideration of the statutory framework is an issue for height of buildings proposed and setbacks (as identified in the proponent's submission) and these matters are dealt with separately below. However, in this regard, the objectives of the R2 Low Density Residential zone are important and relevant to provide guidance on the preferred form of development that falls outside the typical categories of use in that zone.

**Zone R2 Low Density Residential**

**1 Objectives of zone**

- 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 ensure that the general low density nature of the zone is retained and that development for the purposes of dual occupancy (attached) and multi dwelling housing (attached) do not significantly alter the character of a location or neighbourhood.
- To ensure that new development complements or enhances the local streetscape.

**ITEM 2 (continued)**

**ATTACHMENT 1**

- To maintain on sites with varying topography the two storey pitched roof form character of dwelling houses and dual occupancy (attached) developments.
- To ensure that land uses are compatible with the character of the area and responsive to community needs.

The DA submission should demonstrate full compliance with the objectives of the zone.

*1C. Development Application Submission requirements*

The submission requirements for any DA are detailed in Council's Development Application form. The standard information submitted should include: (but not necessarily be limited to):

- Survey Plan
- Site Plan
- Site Analysis
- Elevations
- Sections
- Statement of Environmental Effects
- Stormwater / Drainage concept plan
- Landscaping plan

Plans and analysis particularly relevant to this proposal should include:

- Driveway details including turning circles for all designated vehicles.
- Shadow diagrams and analysis

Supporting documentation to address the following matters should include:

- Traffic and Car Parking Management
- Site Waste Management
- Water Efficiency / Energy Efficiency
- Building Code of Australia Requirements Access / Fire Safety
- Safer By Design / CPTED analysis
- Acoustic issues – potential impacts on adjoining residential properties.
- Heritage issues

Some of these matters are discussed in more detail below.

*2. Adequacy of Built Form / Urban Design*

The proponent's submission recognises issues with the setback of the proposed buildings, both from a compliance and aesthetic point of view. The need to comply with setbacks to three road frontages as well as ensuring development meets the SLSEPP requirement on a long rear boundary setback provide a significant design challenge.

**ITEM 2 (continued)**

**ATTACHMENT 1**

The extended height of the building facing North Road and the narrow setback results in elevations that looks very bulky. The proponents should look at

- Clearly demonstrate the impact of existing ground levels on the design
- Explore design options at the front and back that creates a visual break in the mass of the building. The new and existing building together as currently proposed appear very blocky and this is exacerbated by the additional height.

The pitched roof and the attempts to give the building a more “domestic” appearance are supported both from the point of view that it meets the zone objectives for R2 but also because the premises will be a permanent the home for the majority of residents.

*2C. Height*

The proposed building is higher the 8 metres maximum specified in the SLSEPP for development in zones where residential flat buildings are not permitted. The proponents propose to seek a variation to this control using SEPP 1. In this regard, the submitted material identifies the general height of the new building to be 9.1 metres adjacent to North Road up to 12 metres near the eastern boundary.

In the DA, the extent of variation from 8 metres should be identified in plans and cross-sectional drawings. The extent of variation above 9.5 metres (the height of building maximum for the R2 zone) should also be shown. The extent of variation should also be expressed in numerical terms (i.e. percentage / proportions). The extent to which the non compliance is part of the “pitched roof” should be identified.

Plans and documentation should be included to show the relationship between the proposed height of the building and existing buildings around the site. For example, the shadow analysis should compare the impact from a compliant development to the one proposed. This is likely to be a matter of interest to adjoining property owners when the application is notified to them.

The Senior Living SEPP gives some direction on the purpose of the controls or height adjacent to the boundary. Sufficient information should be included in the application to show that around the whole site, there is no abrupt change in scale of development in the streetscape.

**Seniors Living SEPP**

- (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 ...**
  - (b) **a building that is adjacent to a boundary of the site ... must be not more than 2 storeys in height, and**

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

**ITEM 2 (continued)**

**ATTACHMENT 1**

- (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

**2D. Streetscape and setbacks**

Given its location and the surrounding street and development pattern, the San Antonio Da Padova site might be described as something like an “island”. There is a mix of adjoining uses that would not usually be found in the R2 zone including residential flat buildings. The context of the site needs to be fully explained in any DA.

If the setbacks for low density residential development are applied then the setbacks to North Road and Aeolus Avenue would each be 6 metres. Treating one street as the primary frontage (6 metres) and the other as a secondary frontage (2 metres) anticipates a two storey development not exceeding 9.5 metres in height. If the equivalent control for a residential flat building was applied the figures would be 8 metres and 4.5 metres respectively. The current design proposes a setback to Aeolus Avenue from approximately 5 to 10 metres and from North Road by 2.9 metres. It appears that for the redevelopment site, the proposal is adopting Aeolus Avenue as the primary frontage and the Main entry to the site and North Road is the secondary frontage. No change is proposed to setbacks for the existing nursing home.

The submitted DA should:

- Explain the logic of design required for a nursing home to operate effectively. That is to identify the reasons why the buildings has to have certain width and depth, capacity for connection, accessibility and whether there are any imperatives for room sizes, corridor widths etc. that provide a constraint to shortening or narrowing the buildings to provide greater setbacks from the boundary.
- Show that there are no issues with sight lines for vehicle access to and from the site due to the location of buildings.
- Explain the level changes along the North Road frontage and provide elevations and other drawings that show what the new building will look like when viewed from both frontages.

**2E. Relationship to adjoining development**

Council will need to be convinced that the development at the scale proposed does not adversely impact on the amenity of residents surrounding the site. Supporting information to demonstrate this is required to accompany the DA. More detail is provided below.

*3A. Adequacy of arrangements for vehicle access onto and from the site.*

The site has three road frontages including one to a main road (Blaxland Road) and adjoins a very active intersection. This limits opportunities to provide vehicle access to the site. Given the adjacency of the Ryde Motor Registry, the roads surrounding the site are regularly used by inexperienced drivers. The proposal includes



**ITEM 2 (continued)****ATTACHMENT 1**

connecting the existing car park internally to the driveway in Aeolus Avenue providing an internal through link. The driveway to Aeolus Avenue is proposed to be controlled by a boom gate or other similar device. The car park off North Road will remain generally accessible as the main visitor parking with no change proposed to the current left in-left out movement.

As it adjoins a main road, the DA will be referred to the Roads and Maritime Services for comment. Council Traffic Engineer has advised that the RMS may seek to have a slip lane from North Road to the existing car park entry to discourage potential vehicle conflicts around the traffic lights. The proponent may wish to approach the RMS during the design phase to seek feedback on this aspect of the proposal.

**3B. Adequacy of arrangements for vehicle access across the site**

Parking and vehicle movement on the site shall comply with Australian Standard AS 2890.1. Details of driveway gradients and turning areas should be included in the DA submission. The proposed undercroft area along the North Road frontage is too low to accommodate Council's current garbage collection vehicles. The location of the proposed loading dock is considered unsatisfactory (see below).

**Traffic, Parking and Loading**

A Traffic and Parking Management Report is required to accompany the DA. The report should address all the type of vehicles likely to attend the site including commercial vehicles providing delivery of goods and services. As advised above, parking shall be designed to meet the applicable Australian Standard.

Consideration should be given to relocating the proposed loading dock so that it can be more easily accessed in and left in a forward direction. The current location will require a reversing movement over lanes for entering and leaving traffic. An alternative location further into the site may be more workable.

Due to its length and site lines at the north western edge of the proposed building, the internal connecting road may need to be widened at the corner to accommodate a passing lane and provide better visibility. Alternately, details should be provided on how this link will be managed to avoid vehicle conflicts or potential danger to pedestrians using it.

**Waste Management**

In addition to the Site Waste Management Plan for demolition and construction, details of waste management for the operation of the use are required. Advice on the storage and disposal of medical or sanitary waste should be provided.

It is recommended that the proponents discuss waste management needs with Council's Section Manager for Waste Management (Jude Colechin) prior to finalising the design. In this regard, a designated bin storage and pick-up area may be required near the entry to the site to enable collection of bins by Council's waste contractor.

Please also refer to Council's DCP2010 – Part 7.2 Waste Management.

## ITEM 2 (continued)

## ATTACHMENT 1

### Stormwater and Drainage / On-site Detention

The site comprises three separate parcels which contain easements. The existing nursing home drains through an easement over a downstream property to Council's stormwater system.

Drainage details should include details on the following matters:

- The current drainage arrangements.
- Confirming that the pipe capacity in the existing easement is sufficient to cater for the proposed redevelopment and, if not what works are required to achieve this.
- The mid-section of the site is shown in Council's maps as being affected by flooding (i.e. the 1 in 100 Average Recurrence Interval) and is located at the top of the catchment that drains to Buffalo Creek and the Lane Cove River. A flood assessment report is required.
- Details of on-site detention required to be provided.
- Details of other stormwater devices. For example, is it proposed to capture roof water and or include rainwater tanks on site.
- Details of any lot consolidation proposed and the need for creating and / or extinguishing easements over the site. This should include advice on the timing of any lot consolidation.
- Details on any stormwater quality control devices proposed.

Drainage issues can be discussed directly with Council's Development Engineers who may be contacted through Customer Service (9952 8222) or by making a booking to the Ryde Planning and Business Centre (Wednesday & Friday mornings) by phone or on-line to [www.ryde.nsw.gov.au](http://www.ryde.nsw.gov.au).

### Shadow Diagrams

The proposal includes a 4 storey element. Shadow diagrams are required to accompany the DA. The SEE should include an analysis of how the shadows affect adjoining sites particularly with regard to the impact of any part of the building that exceeds 8 metres and 9.5 metres in height.

### Landscaping Plan and Tree Removal

The proponent's submission identifies that the proposed design includes a shortfall in landscaped area of 513m<sup>2</sup> or just under 18%. This is another significant variation from the SLSEPP control. A SEPP 1 variation is proposed to be sought.

The Landscaping Plan and documentation should:

- Show how the bulk of the proposed buildings may be mitigated by screening where such an effect is appropriate and feasible. The extent of deep soil planting should be shown.
- Show how the proposed terraces are designed to protect privacy in both directions (i.e. for users and adjoining residents).

## ITEM 2 (continued)

## ATTACHMENT 1

- Explain the open space and recreational needs of residents and show how the open space areas and landscaping are designed to meet these needs. This should include advice on solar access, screening from road noise, use of material and the like.
- Explain how the open space and recreational needs of staff and visitors are catered for in the design.

The proposal includes removal of existing trees on the site. Please refer to Council's DCP 2010 – Part 9.6 Tree Management to determine whether an arborist report is required for the trees proposed to be removed. AS a minimum, the species, characteristic and health of the trees will need to be identified. Any consideration of trees will need to include trees on adjoining properties which have a root system extending into the development site.

### Demolition

The proposed redevelopment requires demolition of existing buildings on site. This can be handled as a separate application before or after the main DA or it can be incorporated into the main DA. If the latter path is chosen, then all the information, fees and charge will be required at the time of lodging the DA. This includes a plan showing buildings and works to be demolished, a Demolition Work Method Statement, photos of the buildings and the payment of the damage deposit.

### Heritage issues

AS indicated in the preliminary documentation for the prelodgement, the site adjoins an identified heritage item being the route of "The Great North Road". A separate Heritage Impact Statement will not be sought for submission of the DA as no substantive works are proposed in the road reserve. However, the matter should be addressed in the SEE in the same way as already presented.

In addition, consideration should be given to providing a historical background to the buildings that are proposed to be demolished. This may be able to help to address any concerns which may arise at the notification stage that presents an argument that the old nursing home building should be considered for preservation. These matters should be included in the SEE.

### Sustainability

It is noted that a BASIX Certificate is not required for the proposed category of development and that it is proposed to comply with Section J of the Building Code of Australia. It is further noted that details on services for the proposed development will be provided including fire safety.

In addition, the DA should address Council's DCP 2010 – part 7.1 Energy Smart, Water Wise noting that some aspects of it have been superseded by Section J.

### Safer By Design / CPTED analysis

The proposed DA should include an assessment under the Safer By Design principles for residents, staff and visitors.

**ITEM 2 (continued)**  
**Acoustic issues**

**ATTACHMENT 1**

An Acoustic Report should be provided to address the potential impacts of activities on the nursing home site on adjoining residential properties. For example, the additional traffic and activities in the long driveway should be examined. Appropriate management processes may need to be implemented to ensure vehicle delivery times do not involve the creation of noise early in the morning or late at night.

**Outcomes**

Council's preferred option for any proposed development is that it complies fully with the applicable controls. The proponents have come forward with a proposal that does not comply numerically with controls for height, setbacks and landscaping areas. The prelodgement submission acknowledges this and the proponent has indicated a wish to proceed with a proposal at this scale for other reasons. The approach therefore is to attempt to address all the relevant matters so that the application can be effectively assessed on its merits.

An issue of concern is the need for a SEPP 1 variation for up to four items under the SLSEPP being height (in metres), height (in storeys adjacent to the boundary), height in storeys (in the rear 25% of the site) and landscaping area. SEPP 1 is applicable because the variations are being sought to a SEPP. If the variations were being sought to RLEP2010, a consideration under Clause 4.6 is whether or not the "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. Both controls require consideration of "the public benefit of maintaining the planning controls adopted by the environmental planning instrument". Any discourse seeking variation under SEPP 1 should address these matters alongside any consideration as to why compliance with these development standards is unreasonable or unnecessary in the circumstances of the case.

It is noted that some of the detail of the proposed design was still being worked on at the time of the Prelodgement meeting. It is suggested that a further meeting of the main proponents be held prior to lodging the DA.

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**ITEM 2 (continued)**

**ATTACHMENT 4**

Assessment of Proposal in terms of *Seniors Living Policy: Urban Design Guideline for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004.

Provision	Comments	Comply
<b>1. Responding to Context</b>		
<b>Neighbourhood character:</b> <b>Street layout &amp; hierarchy:</b> What is the pattern and hierarchy of streets in the local area?	No changes to the street pattern or hierarchy.	NA
<b>Blocks &amp; Lots</b> What are the predominant block and lot patterns? How have these changed over time (for example by subdivision and amalgamation)? What are the typical lot sizes, shape and orientation.	No changes to the pattern of the street. The predominant pattern being the street block is of regular shaped allotments with street frontages.	NA
<b>Built environment:</b> Look for buildings that have a good relationship to the street or characteristics that contribute positively to neighbourhood character. Do buildings have a consistent scale and massing? Is there a regular rhythm of spaces between them? What are the atypical buildings? Should particular streetscapes and building types be further developed or discouraged?	Many of the adjoining buildings are single storey however there are examples of 2 storeys in the street. A site containing 2 x 3-4 storey residential flat building adjoins to the east – however this would be considered as “atypical” because this is an older-style residential flat development and the land is zoned R2 Low Density Residential which does not normally allow this type of development.  It is not considered that this development should replicate this adjoining “atypical” building which would not be permitted under current planning controls.	<b>No</b>
<b>Trees:</b> Where are the significant trees and landscapes in the neighbourhood? Are there street trees, and if so what species and spacing? What are the patterns of planting in the front and rear gardens? Could new development protect and enhance existing vegetation?	No street trees affected by the proposal. Six trees shown for removal but 4 are exempt under the DCP. Suitable replacement species to be planted.	Yes
<b>Policy Environment:</b> What are the key characteristics of an area as identified by the Council? How might these be accommodated in the design of	Council LEP does not specify the key characteristics of the area and there are no special	<b>No</b>



**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<p>new development for the area? Are there any special character areas, view corridors, vistas, landscaped areas, or heritage buildings or precincts that should be considered?</p>	<p>character areas, view corridors or heritage buildings.</p> <p>However the SHSEPP prescribes height controls for this site and it's zoning – and the development substantially exceeds these height controls.</p>	
<p><b>2. Site Planning and Design</b></p>		
<p><b>Design principles &amp; better practice</b></p> <ul style="list-style-type: none"> <li>• Site design should be driven by the need to optimise internal amenity and minimise impacts on neighbours. These requirements should dictate the maximum development yield.</li> <li>• Cater for the broad range of needs from potential residents by providing a mix of dwelling sizes and dwellings both with and without assigned car parking. This can also provide variety in massing and scale of built form within the development.</li> </ul> <p><b>Built form:</b></p> <ul style="list-style-type: none"> <li>• Locate the bulk of development towards the front of the site to maximise the number of dwellings with frontage to a public street.</li> <li>• Parts of the development towards the rear of the site should be more modest in scale to limit the impacts on adjoining properties.</li> <li>• Design and orient dwellings to respond to environmental conditions: <ul style="list-style-type: none"> <li>- orient dwellings on the site to maximise solar access to living areas and private open space</li> <li>- locate dwellings to buffer quiet areas within the development from noise.</li> </ul> </li> </ul>	<p>The design would provide a high level of amenity to internal residents.</p> <p>The built form is influenced by the existing development on the site &amp; the need to retain the internal open space for dementia patients.</p> <p>The existing “rear” (ie southern) part of the site contains an existing 2-3 storey building which is not modest in scale</p> <p>The built form exceeds in part the height requirements of the SEPP, and whilst 3-4 storey residential flat buildings adjoin, these are “atypical” and would not be permitted under current controls.</p>	<p>Yes</p> <p><b>No</b></p>

**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<p><b>Tree, landscaping &amp; deep soil zones</b></p> <ul style="list-style-type: none"> <li>• Maintain existing patterns and character of gardens and trees:               <ul style="list-style-type: none"> <li>- retain trees and planting on the street and in front setbacks to minimise the impact of new development on the streetscape</li> <li>- retain trees and planting at the rear of the lot to minimise the impact of new development on neighbours and maintain the pattern of mid block deep soil planting</li> <li>- retain large or otherwise significant trees on other parts of the site through sensitive site planning</li> <li>- where it is not possible or desirable to retain existing trees, replace with new mature or semi-mature trees.</li> </ul> </li> <li>• Improve amenity by increasing the proportion of the site that is landscaped area by:               <ul style="list-style-type: none"> <li>- increasing the width of landscaped areas between driveways and boundary fences, and between driveways and new dwellings</li> <li>- providing pedestrian paths</li> <li>- reducing the width of driveways</li> <li>- providing additional private open space above the minimum requirements</li> <li>- providing communal open space</li> <li>- increasing front, rear and/or rear setbacks</li> <li>- providing small landscaped areas between garages, dwelling entries, pedestrian paths, driveways, etc.</li> </ul> </li> <li>• Provide deep soil zones for absorption of run-off and to sustain vegetation, including large trees:               <ul style="list-style-type: none"> <li>- it is preferable that as least 10% of the site area is provided as a single area at the rear of the site, where there is the opportunity to provide a mid-block corridor of trees within a neighbourhood</li> <li>- where the pattern of neighbourhood development has deep soil planting at</li> </ul> </li> </ul>	<p>An arborist report has been submitted in support of the removal of some of the trees on the site. The proposal has been assessed by Council’s consultant landscape architect who has indicated that the proposal is satisfactory subject to the measures in the arborist report.</p> <p>The actual amount of landscaping (as required by the SHSEPP) is significantly deficient for the number of rooms proposed (ie 25m<sup>2</sup> required per room). Therefore there would be less land available as deep soil areas.</p>	<p style="text-align: center;"><b>No</b></p>

**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<ul style="list-style-type: none"> <li>- the front of the site, it may be desirable to replicate this pattern.</li> <li>• Minimise the impact of higher site cover on stormwater runoff by:               <ul style="list-style-type: none"> <li>- using semi-pervious materials for driveways, paths and other paved areas</li> <li>- using of on-site detention to retain stormwater on site for re-use.</li> </ul> </li> </ul>		
<p><b>Parking, garaging and vehicular circulation:</b></p> <ul style="list-style-type: none"> <li>• Consider centralised parking in car courts to reduce the amount of space occupied by driveways, garages and approaches to garages.</li> <li>• Where possible maintain existing crossings and driveway locations on the street.</li> </ul>	<p>Staff parking centralised and provided in the existing basement. Limited public parking due to the nature of the use &amp; located on the western part of the site. The number of driveways has been reduced as a result of the consolidation of the sites</p>	<p>Yes</p>
<p><b>SEPP Controls</b></p>	<p>Addressed in the body of the report</p>	
<p><b>Rules of Thumb</b> The proportion of the site given to landscaped area and deep soil should be increased in less urban areas, on large lots, and in areas already characterised by a high proportion</p>	<p>The actual amount of landscaping (as required by the SHSEPP) is significantly deficient for the number of rooms proposed (ie 25m<sup>2</sup> required per room). Therefore there would be less land available as deep soil areas.</p>	<p><b>No</b></p>
<p><b>3. Impacts on streetscape</b></p>		
<p><b>General:</b></p> <ul style="list-style-type: none"> <li>• Respond to the desired streetscape character by:               <ul style="list-style-type: none"> <li>- locating and designing new development to be sympathetic to existing streetscape patterns (building siting, height, separation; driveway locations, pedestrian entries, etc.)</li> <li>- providing a front setback that relates to adjoining development.</li> </ul> </li> </ul>	<p>Concerns are raised re the new building proposed for the north-western corner of the site (ie along the North Road frontage) given it's height (2 storeys above grade parking) and in particular it's small setback to North Road (2.86m).</p>	<p><b>No</b></p>

**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<p><b>Built form:</b></p> <ul style="list-style-type: none"> <li>• Reduce the visual bulk of a development by:               <ul style="list-style-type: none"> <li>- breaking up the building massing and articulating building facades</li> <li>- allowing breaks in rows of attached dwellings</li> <li>- using variation in materials, colours and openings (doors, windows and balconies) to order building facades with scale and proportions that respond to the desired contextual character</li> <li>- setting back upper levels behind the front building facade</li> <li>- where it is common practice in the streetscape, locating second storeys within the roof space and using dormer windows to match the appearance of existing dwelling houses</li> <li>- reducing the apparent bulk and visual impact of a building by breaking down the roof into smaller roof elements</li> <li>- using a roof pitch sympathetic to that of existing buildings in the street</li> <li>- avoiding uninterrupted building facades including large areas of painted render.</li> </ul> </li> </ul>	<p>Visual bulk is broken up by some articulation but concerns remain re height and setbacks to North Road as above.</p> <p>Upper levels of both the new buildings are not recessed back in – which contributes to the bulk of the building.</p>	<p><b>No</b></p>
<p><b>Trees, landscaping and deep soil zones:</b></p> <ul style="list-style-type: none"> <li>• Retain existing trees and planting in front and rear setbacks and the road reserve:               <ul style="list-style-type: none"> <li>- where this is not possible or not desirable use new planting in front setback and road reserve</li> <li>- plant in front of front fences to reduce their impact and improve the quality of the public domain.</li> </ul> </li> </ul>	<p>A number of trees to be retained and some to be removed. The proposed replacement species is considered to be suitable.</p> <p>Concerns raised re amount of landscaping provided, which does not comply with SHSEPP requirement</p>	<p><b>No</b></p>

**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<p><b>Residential amenity</b></p> <ul style="list-style-type: none"> <li>• Clearly design open space in front setbacks as either private or communal open space.</li> <li>• Define the threshold between public and private space, for example by level change, change in materials, fencing, planting and/or signage.</li> <li>• Design dwellings at the front of the site to address the street.</li> <li>• Provide a high quality transition between the public and private domains by:               <ul style="list-style-type: none"> <li>- designing pedestrian entries where possible to be directly off the street</li> <li>- for rear residents, providing a pedestrian entry that is separate from vehicular entries</li> <li>- designing front fences to provide privacy where necessary, but also to allow for surveillance of the street</li> <li>- ensuring that new front fences have a consistent character with front fences in the street</li> <li>- orienting mailboxes obliquely to the street to reduce visual clutter and the perception of multiple dwellings</li> <li>- locating and treating garbage storage areas and switchboards so that their visual impact on the public domain is minimised.</li> </ul> </li> </ul>	<p>The proposal would provide a good level of amenity for the residents, and transitions between public and private domains (at the front of the site in Aeolus Ave). However the development is unacceptable for other reasons as discussed throughout the report.</p>	<p>Yes</p>



**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<p><b>Parking, garaging and vehicular circulation:</b></p> <ul style="list-style-type: none"> <li>• Avoid unrelieved, long, straight driveways that are visually dominant by:               <ul style="list-style-type: none"> <li>- varying the alignment of driveways to avoid a 'gunbarrel' effect</li> <li>- setting back garages behind the predominant building line to reduce their visibility from the street</li> <li>- considering alternative site designs that avoid driveways running the length of the site.</li> </ul> </li> <li>• Minimise the impact of driveways on streetscape by:               <ul style="list-style-type: none"> <li>- terminating vistas with trees, vegetation, open space or a dwelling, not garages or parking</li> <li>- using planting to soften driveway edges</li> <li>- varying the driveway surface material to break it up into a series of smaller spaces (for example to delineate individual dwellings)</li> <li>- limiting driveway widths on narrow sites to single carriage width with passing points</li> <li>- providing gates at the head of driveways to minimise visual 'pull' of the driveway.</li> </ul> </li> <li>• Where basement car parking is used minimise the impact of the entry by:               <ul style="list-style-type: none"> <li>- reducing the width where possible to single vehicle width rather than double</li> <li>- locating it to one side of the site, not at centre where visually prominent</li> <li>- recessing it from the main building façade</li> <li>- providing vehicular access from secondary street if possible</li> <li>- providing security doors to avoid "black hole" in streetscape</li> <li>- returning façade material into the visible area of the car park entry</li> </ul> </li> <li>• Locate or screen all parking to minimise visibility from the street.</li> </ul>	<p>Parking is in 2 locations – staff parking in the existing basement and visitor parking located within an area on the western side of the site. Vehicular entrance to the site &amp; egress from the site has been rationalised thus reducing the existing number of driveways. Vehicle circulation similarly has been rationalised thus reducing the likelihood of conflict within the site.</p> <p>Access to the basement is via the existing driveway along the eastern part of the site with the entrance to the parking area not visible from the street. Site landscaping treatment assists in screening visitor carparking area.</p> <p>However, concerns are raised regarding the driveway in North Road from a vehicle safety point of view as discussed in the body of the report.</p>	<p>Yes</p>
<p><b>SEPP Controls</b></p>	<p>These have been addressed elsewhere in the report</p>	

**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<p><b>Rules of Thumb</b></p> <ul style="list-style-type: none"> <li>- Respond to council planning instruments that specify the character or desired character for the area.</li> <li>- Where there is a consistent front building alignment, new development should not encroach on the front setback.</li> <li>- Driveways or basement car park entries should not exceed 25% of the site frontage.</li> <li>- Garage doors should be set back a minimum of 1 m metre behind the predominant building facade on both the street frontage and common driveways.</li> </ul>	<p>There are no Council planning instruments that prescribe a desired character for this location or this type of development.</p> <p>Although the site is somewhat isolated (separated from other low density residential sites by a road), and so front setbacks are not consistent, there are concerns regarding the setback of the proposed building to North Road.</p> <p>The driveways are considerably less than 25% of their respective frontage &amp; the entry to the basement parking area is generally not visible from the street</p>	<p>Yes</p> <p><b>No</b></p>
<b>4. Impacts on Neighbours</b>		
<p><b>Built form:</b></p> <ul style="list-style-type: none"> <li>• Design the relationship between buildings and open space to be consistent with the existing patterns in the block:</li> <li>- where possible maintain the existing orientation of dwelling ‘fronts’ and ‘backs’</li> <li>- where the dwelling must be oriented at 90 degrees to the existing pattern of development, be particularly sensitive to the potential for impact on privacy of neighbours.</li> <li>• Protect neighbours’ amenity by carefully designing the bulk and scale of the new development to relate to the existing residential character, for example by:               <ul style="list-style-type: none"> <li>• Setting upper storeys back behind the side or rear building line</li> <li>• Reduce the visual bulk of roof forms by breaking down the roof into smaller elements, rather than having a single uninterrupted roof structure.</li> <li>• Design second storeys to reduce overlooking of neighbouring properties,</li> </ul> </li> </ul>	<p>The consolidation of the three sites and the fact that there are 3 street frontages create site that that does not have a traditional front &amp; rear.</p> <p>The proposal is considered to have adverse impacts on the neighbouring properties and the streetscape in terms of built form – in particular, the new buildings will appear as fully 3 or 4 storeys (ie upper storeys are not set in behind side and rear building lines), and there is not much architectural relief.</p>	<p>Yes</p> <p><b>No</b></p>

**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<p>for example by:</p> <ul style="list-style-type: none"> <li>- incorporating them within the roof space and providing dormer windows</li> <li>- offsetting openings from existing neighbouring windows or doors.</li> <li>• Reduce the impact of unrelieved walls on narrow side and rear setbacks by limiting the length of the walls built to these setbacks.</li> </ul>		
<p><b>Trees, landscaping and deep soil zones:</b></p> <ul style="list-style-type: none"> <li>• Use vegetation and mature planting to provide a buffer between new and existing dwellings.</li> <li>• Locate deep soil zones where they will provide privacy between new and existing dwellings.</li> <li>• Planting in side and rear setbacks can provide privacy and shade for adjacent dwellings.</li> <li>• For new planting, if possible, use species that are characteristic of the local area.</li> </ul>	<p>Concerns are raised regarding the site landscaping, which does not comply with the minimum landscaped area prescribed in the SHSEPP.</p>	<p><b>No</b></p>

**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<p><b>Residential amenity</b></p> <ul style="list-style-type: none"> <li>• Protect sun access and ventilation to living areas and private open space of neighbouring dwellings by ensuring adequate building separation.</li> <li>• Design dwellings so that they do not directly overlook neighbours' private open space or look into existing dwellings.</li> <li>• When providing new private open space minimise negative impacts on neighbours, for example by:               <ul style="list-style-type: none"> <li>- locating it in front setbacks where possible</li> <li>- ensuring that it is not adjacent to quiet neighbouring uses, for example bedrooms</li> <li>- designing dwellings around internal courtyards</li> <li>- providing adequate screening.</li> </ul> </li> <li>• Where side setbacks are not large enough to provide useable private open space, use them to achieve privacy and soften the visual impact of new development by planting screen vegetation.</li> </ul>	<p>The site has residential flats to the east (frontage to roads on the other sides). Shadow plans indicated that adequate shadows only begin to affect the property to the east at around 1pm given the land's orientation.</p> <p>Proposed driveway and landscaping adjoining would provide some buffer to the neighbouring residential flats, and amended plans provide some privacy screening to the terrace areas, and walkways. Privacy screens could be provided to the resident rooms to further enhance privacy.</p> <p>Outdoor areas are enclosed by buildings around their perimeter and so it is generally considered that there would be minimal privacy impacts from the outdoor areas.</p>	<p>Yes</p> <p>Yes</p>
<p><b>Parking, garaging and vehicular circulation:</b></p> <ul style="list-style-type: none"> <li>• Provide planting and trees between driveways and side fences to screen noise and reduce visual impacts.</li> <li>• Position driveways so as to be a buffer between new and existing adjacent dwellings.</li> </ul>	<p>The proposed new vehicular entrance is on Aeolus Ave frontage and utilises the existing crossing that provides access to the existing basement parking area. No significant change to the existing arrangements</p>	<p>NA</p>
<p><b>SEPP Controls</b></p>	<p>These have been addressed elsewhere in the report</p>	
<p><b>Rules of Thumb</b></p> <ul style="list-style-type: none"> <li>• Where side setbacks are less than 1.2m, a maximum of 50% of the development should be built to this alignment.</li> <li>• The length of unrelieved walls along narrow side or rear setbacks should not exceed 8 metres.</li> <li>• Living rooms of neighbouring dwellings should receive a minimum 3 hours direct sunlight between 9am – 3pm in mid-</li> </ul>	<p>The design generally complies with these requirements and provides satisfactory amenity for the residents of the nursing home</p>	<p>Yes</p>

**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<p>winter neighbouring dwellings.</p> <ul style="list-style-type: none"> <li>• Solar access to the private open space of neighbouring dwellings should not be unreasonably reduced.</li> </ul>		
<p><b>5. Internal Site Amenity</b></p>		
<p><b>Built form:</b></p> <ul style="list-style-type: none"> <li>• Design dwellings to maximise solar access to living areas and private open spaces.</li> <li>• In villa or townhouse style developments, provide dwellings with a sense of individual identity through building articulation, roof form and other architectural elements, and through the use of planting and building separation: <ul style="list-style-type: none"> <li>- provide buffer spaces and/or barriers between the dwellings and driveways, or between dwellings and communal areas</li> <li>- use trees, vegetation, fencings, or screening devices to establish curtilages for individual dwellings.</li> </ul> </li> <li>• Design dwelling entries so that they: <ul style="list-style-type: none"> <li>- are clear and identifiable from the street or driveway</li> <li>- provide a buffer between public/communal space and private dwellings</li> <li>- provide a sense of address for each dwelling</li> <li>- are oriented to not look directly into other dwellings.</li> </ul> </li> </ul> <p><b>Parking, garaging and vehicular circulation:</b></p>	<p>Given the site is occupied by an existing nursing home and the proposal is to extend its capacity, there are constraints to the design. Most of the rooms have access to sunlight and those that don't are able to utilise 2 internal courtyards as well as some covered roof terraces, landscaping is proposed to assist in screening the building bulk and providing privacy screening. The development has been designed so that the main entry, for both vehicles &amp; pedestrians, is to Aeolus Ave</p>	<p>Yes</p>
<ul style="list-style-type: none"> <li>• Locate habitable rooms, particularly bedrooms, away from driveways, parking areas and pedestrian paths: <ul style="list-style-type: none"> <li>- where this is not possible use physical separation, planting, screening devices or louvres to achieve adequate privacy.</li> </ul> </li> <li>• Avoid large uninterrupted areas of hard surface (driveways, garages, walls). Small areas of planting can break these up and soften their 'hard edge' appearance.</li> <li>• Screen parking from views and outlooks from dwellings.</li> <li>• Reduce the dominance of areas for</li> </ul>	<p>The proposed new vehicular entrance is on Aeolus Ave frontage and utilises the existing crossing that provides access to the existing basement parking area.</p> <p>Concerns are raised regarding the proposed driveway arrangements from North Road as discussed in the body of the report.</p>	<p>Yes</p>



**ITEM 2 (continued)**

**ATTACHMENT 4**

Provision	Comments	Comply
<p>vehicular circulation and parking by considering:</p> <ul style="list-style-type: none"> <li>- single rather than double width driveways with passing bays</li> <li>- communal car courts rather than individual garages</li> <li>- single rather than double garages</li> <li>- tandem parking or a single garage with single car port in tandem</li> <li>- the provision of some dwellings without any car parking for residents without cars.</li> </ul> <p><b>Residential amenity</b></p> <ul style="list-style-type: none"> <li>• Provide distinct and separate pedestrian and vehicular circulation on the site:               <ul style="list-style-type: none"> <li>- where this is not possible shared driveway/pedestrian paths should be wide enough to allow a vehicle and a wheelchair to pass safely.</li> <li>- provide pedestrian routes to all public and semi-public areas including lobbies, dwelling entries, communal facilities and visitor parking spaces.</li> </ul> </li> <li>• Ensure that adequate consideration is given to safety and security by:               <ul style="list-style-type: none"> <li>- avoiding ambiguous spaces in building and dwelling entries that are not obviously designated as public or private</li> <li>- minimising opportunities for concealment by avoiding blind or dark spaces between buildings, near lifts and foyers and at the entrance to or within indoor car parks</li> <li>- clearly defining thresholds between public and private spaces (for example by level change, change in materials, fencing, planting and/or signage).</li> </ul> </li> <li>• Provide private open space that:               <ul style="list-style-type: none"> <li>- is generous in proportion and adjacent to the main living areas of the dwelling (living room, dining room or kitchen)</li> <li>- is oriented predominantly north, east or west to provide solar access</li> <li>- comprises multiple spaces for larger dwellings</li> <li>- uses screening for privacy but also allows casual surveillance when located adjacent to public or communal areas</li> </ul> </li> </ul>	<p>Separate circulation paths proposed that are highly visible and do not cause safety or security concerns. Significant open space areas (internal garden &amp; courtyard) have been provided that will adequately cater for the needs of the residents. This is supplemented by a number of terraces on the northern side of the building. Garbage/waste will be stored within the building (loading dock) pending collection and will be screened from the street by the use of solid doors</p>	<p>Yes</p>

**ITEM 2 (continued)**

**ATTACHMENT 4**

<b>Provision</b>	<b>Comments</b>	<b>Comply</b>
<p>(including streets and driveways)</p> <ul style="list-style-type: none"> <li>- provides both paved and planted areas when located at ground level</li> <li>- retains existing vegetation where practical</li> <li>- uses pervious pavers where private open space is predominantly hard surfaced, to allow for water percolation and reduced runoff.</li> <li>• Provide communal open space that:               <ul style="list-style-type: none"> <li>- is clearly and easily accessible to all residents and easy to maintain</li> <li>- incorporates existing mature trees and vegetation to provide additional amenity for all residents</li> <li>- includes shared facilities such as seating areas and barbecues to permit resident interaction.</li> </ul> </li> <li>• Site and/or treat common service facilities such as garbage collection areas and switchboard to reduce their visual prominence to the street or to any private or communal open space.</li> </ul>		
<b>SEPP Controls</b>	These have been addressed elsewhere in the report	
<p><b>Rules of Thumb</b></p> <ul style="list-style-type: none"> <li>• Separation of 1.2m should be achieved between habitable rooms and driveway or car parks of other dwellings:               <ul style="list-style-type: none"> <li>- this can be reduced if adequate screening is provided.</li> </ul> </li> </ul>	Design complies	Yes

**ITEM 2 (continued)**

**ATTACHMENT 5**

PLANNING  
BUILDING  
HERITAGE  
URBAN DESIGN

CITY  
PLAN  
SERVICES

Expansion of Residential Care Facility  
St. Antonio Da Padova Village  
305 Blaxland Road Ryde

SEPP 1 Objection - Height

July 2012

ITEM 2 (continued)

ATTACHMENT 5



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OBJECTION PURSUANT TO STATE ENVIRONMENTAL PLANNING POLICY  
No.1 – DEVELOPMENT STANDARDS

1 Background

State Environmental Planning Policy 1 (SEPP 1) was introduced in 1980 to allow flexibility in the application of development standards. It enables Council to vary a statutory development standard where strict compliance with the control can be shown to be either unreasonable or unnecessary, or tend to hinder the attainment of the objects specified in 5(a)(i) or (ii) of the Environmental Planning and Assessment Act.

Section 5 (a) (i) and (ii) of the Environmental Planning and Assessment Act is set out below:

5 Objects

*The objects of this Act are:*

(a) to encourage:

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

Clause 7 of the Policy provides that:

*Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in Clause 6.*

It is anticipated that Council would have assumed the concurrence of the Director for the purposes of dealing with this matter.

The former Department of Planning's *Guidelines for use of State Environmental Planning Policy No. 1* (refer to Circular B1) further states that:

*As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the*

ITEM 2 (continued)

ATTACHMENT 5



*standard as much as one which complies. In many cases the variation will be numerically small and in other case it may be numerically large, but nevertheless consistent with purpose of the standard.*

*In deciding whether to consent to a development application the council should test whether the proposed development is consistent with the State, regional or local planning objectives for the locality, and in particular the underlying objective of the standard. If the development is not only consistent with underlying purpose of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unreasonable or unnecessary.*

Given the above, Council, in considering an objection under SEPP 1, should have regard to:

- Whether the proposal will be consistent with the objectives of the zone applying to the development site;
- Whether the proposal will be consistent with the underlying purpose of the standard to be varied;
- Whether the development will be consistent with the Objects of the Act.

This process will enable determination of whether strict compliance with the standard is unreasonable or unnecessary.

To further assist in the evaluation of this matter, this SEPP 1 objection also has regard to the accepted 5 part test for the assessment of a SEPP 1 objection established by the NSW Land and Environment Court (*Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46.*)

2 Land to which this objection applies

This objection applies to a development application for the expansion of nursing home facilities at St. Antonio Da Padova Village, No. 305 Blaxland Road Ryde, being land comprising Lot 1 DP 1069680 and Lots A and B DP 414332.

3 Relevant Environmental Planning Instrument

The environmental planning instrument to which this Objection relates is State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. (SLSEPP)



ITEM 2 (continued)

ATTACHMENT 5



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4 Relevant Development Standard

The development standard to which this objection relates is clause 40 (4) of SLSEPP which state:

*"(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, and*

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

*(c) a building located in the rear 25% area of the site must not exceed 1 storey in height."*

5 Variation to the Standard

The extent to which the development departs from the provision within clause 40(4) of SLSEPP is set out below:

**Building height - clause 40(4)(a)**

The SLSEPP defines building height as:

*"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."*

The extent to which building exceeds the 8m height limit in clause 40(4)(a) is 2.6m - 4.12m adjacent to the eastern site boundary, that is, the maximum building heights range between 10.62m -12.12m.

The locations of those building heights are plotted on drawing DA-401 prepared by Woodhead Architects, which accompany the development application.

**ITEM 2 (continued)**

**ATTACHMENT 5**



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**Number of storeys - clause 40(4)(b)**

The building is a maximum of:

- 3 storeys adjacent to the western site boundary (North Road); and
- 4 storeys adjacent to the eastern site boundary.

These circumstances are also demonstrated on drawings by Woodhead Architects.

**Building height at rear of the site - clause 40(4)(c)**

The street pattern effectively means the site is mostly isolated from neighbouring allotments making the application of clause 40(4)(c) difficult as there is no clear 'rear' boundary in this instance. Although the street address of the Village is No. 305 Blaxland Road, the revised site planning results in Aeolus Avenue becoming the actual, functioning address of the site and consequently the eastern edge of the site is a 'side' boundary.

Accepting that, the rear boundary is the southern edge of the site, which is common with Beihler Lane. As there is no alteration to the existing built form at the southern end of the site we contend that 40(4)(c) of the SLSEPP does not apply to this proposal.

However if Council of the view that the eastern site boundary should be treated as the 'rear boundary' of the site then our justification for varying clause 40(4)(c) is as per the contentions set out at sections 6 - 9 below.

**6 Justification for the Variation of the Standard and Matters for Consideration**

The requirement for consideration and justification of a SEPP 1 necessitates an assessment of a number of criteria. It is recognised that it is not merely sufficient to demonstrate a minimisation of environmental harm to justify a SEPP 1 objection, although in the circumstance of this case, the absence of material impacts on adjacent properties is of considerable merit.

The proposed variation from the development standard is assessed below against the accepted 5 part test for the assessment of a SEPP 1 objection established by the NSW Land and Environment Court (*Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46.*).

**A. Is the planning control in question a development standard?**

The height controls prescribed under clause 40(4) of SLSEPP satisfy the definition of a "development standard" which is defined by the Environmental Planning and Assessment

**ITEM 2 (continued)**

**ATTACHMENT 5**



Act:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) .....
- (b) .....
- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work....."*

**B. What is the underlying object or purpose of the standard?**

SLSEPP provides no instruction on the intent of the height control in clause 40(4)(a) and only limited instruction relative to clause 40(4)(b), and does not otherwise nominate any objectives to underpin the intent of the various height controls. It is therefore appropriate to consider the objectives or purpose of the height standards relative to the following elements of the Policy:

- Clause 2(1)(a) - Aims of the Policy;
- Part 3, Division 2 - Design Principles
- Clause 40(4)(a); and
- Clause 40(4)(b).

The terms of those clauses are considered below:

Clause 2(1)(a)

- (1) *This Policy aims to encourage the provision of housing (including residential care facilities) that will:*
  - (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
  - (b) *make efficient use of existing infrastructure and services, and*
  - (c) *be of good design*

*Response*

The application seeks to increase the supply of accommodation onsite from 50 beds to 112 beds. The adequacy of existing utility service is demonstrated at section 5.2.4 and Appendix J of the Statement of Environmental Effects.

ITEM 2 (continued)

ATTACHMENT 5



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Part 3, Division 2

Clause 33 addresses neighbourhood amenity and streetscape. The manner in which the heights of this project respond to the relevant provisions is presented below:

- 33(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*

*Response*

The built form of the locality is not homogenous in terms of land use, density or scale whether expressed as an overall height or number of storeys. This circumstance occurs partly due to topography which, for example, allows for residential flat buildings of 4 storeys at No. 1 Aeolus Avenue immediately adjoining the subject site. This proposed building adopts the same design approach, particularly adjacent to the eastern site boundary where the addition is required to integrate into the existing nursing home building.

Although a limited element of the building is 4 storeys, that scale is not apparent from the public domain as much of the building is below street level at the Aeolus Avenue boundary. Refer to sections 5.2.1, 5.2.2 and Appendix B of the Statement of Environmental Effects for further details.

- 33(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*
  - (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*

*Response*

The arrangement of the volume of the building has been specifically informed by an acknowledgement of the need to maintain adequate solar access to No. 1 Aeolus Avenue. Refer to architectural drawings 501-503, and section 5.2.2 and Appendix B of the Statement of Environmental Effects for further details.

- 33(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*

ITEM 2 (continued)

ATTACHMENT 5



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*Response*

The consideration of the setbacks to both Aeolus Avenue and North Street are addressed in detail at section 5.2.2 and Appendix B of the Statement of Environmental Effects

Clause 40(4)(a)

As noted, the extent to which the building exceeds the 8m height limit in clause 40(4)(a) is 2.6m - 4.12m adjacent to the eastern site boundary, that is, the maximum building heights range between 10.62m - 12.12m.

In addition to the contentions within the SEE and Appendix B, it is also noted:

- The extent of the non-compliance applies only to a limited, 22m long, section of the building at its eastern elevation.
- The height at the roof ridge in this part of the proposed building is only 650mm above that of the corresponding roof ridge element of the adjacent building at No. 1 Aeolus Avenue. Arguably, given the setback of the building from Aeolus Avenue, this minor disparity in building heights will not be apparent from the public domain.

Clause 40(4)(b)

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

*Response*

Refer to the architectural drawings, sections 5.2.1, 5.2.2 and Appendix B of the Statement of Environmental Effects for further details.

It should also be noted that:

- With regard to building height adjacent to the eastern boundary, refer to comments above for clause 40(4)(a); and
- With regard to building height adjacent to North Road, whilst the building is 3 storeys, the height (as defined in the SLSEPP) is actually less than 8m (refer to drawing DA 401).

**C. *Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?***

The terms of clause 2 and Part 3, Division 2 of the SLSEPP provide a basis for assessment of the potential environmental impacts of the proposal. Within that framework, the absence



**ITEM 2 (continued)**

**ATTACHMENT 5**



of any adverse environmental impacts would indicate that strict compliance with the height controls in clause 40(4) is unreasonable or unnecessary in this particular instance.

- D. *Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?***

The technical non-compliances with the development standards allows for an orderly use of the land which is otherwise constrained by:

- The local road pattern and the substantial street frontages which present challenges particularly for locating the main pedestrian and vehicle entry, internal accessways, parking and service areas;
- Site topography which changes markedly between the northern and southern boundaries;
- The location and floor levels of the existing nursing home building which directly inform any options for the expansion of facilities;
- The need to achieve appropriate separation from adjoining residential development to preserve the amenity of that neighbouring site in terms of outlook, privacy and solar access;
- The need to maximise internal site amenity, for individual rooms as well as communal indoor and outdoor spaces;

The arguments provided above support the case to allow flexibility in the application of the standard under Clause 40(4) of SEPP (Seniors Housing). Strict compliance with the development standards would hinder the attainment of the specified objects of the Act as follow:

- The social and economic welfare of the community (Section 5(a)(i)) will not be promoted by strict compliance with the standard, which would result in a reduction in the supply of affordable aged persons housing and associated support services to a community in need of such housing and services; and
- The promotion and co-ordination of the orderly and economic use of the site (Section 5(a)(ii)) will be hindered by strict compliance with the standard because it will necessitate either a substantial reduction in the 'productive' use of the site or in the quality of services to be provided to the residents and local community. This affects the feasibility of the proposal and therefore the economic use of this important site.

**ITEM 2 (continued)**

**ATTACHMENT 5**



**E. Is the objection well founded?**

In the decision of Chief Justice Preston (*Wehbe v Pittwater Council [2007] NSW LEC 827*) expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as set out below:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

As demonstrated above, it is our position that the objectives of the standard are achieved by this proposal notwithstanding technical non-compliance with the height standards.

**7 Matters of state or regional significance**

The non compliance does not raise any matter of state or regional significance, other than being consistent with the specified aims of SEPP (Seniors Housing), in that it will:-

- Increase the supply and diversity of residences that meet the needs of seniors or people with a disability;
- Will make an efficient use of existing infrastructure and services;
- Demonstrate good design and provide high levels of amenity for residents;
- Demonstrate a built form that responds to the characteristic of the site; and
- Ensure that adequate support services will be provided on-site for residents.

**8 Public benefit in maintaining the adopted planning control**

Whilst there may be some public benefit in maintaining the SEPP standards in the circumstances of ordinary low density residential development on smaller sites, the particular circumstances of this site and its current and proposed development mean that a variation

**ITEM 2 (continued)**

**ATTACHMENT 5**



does not create any general adverse precedent. The ability to maintain the standard in ordinary circumstances should be unaffected by the proposed variation and no loss of public benefit in this regard should arise. Even if there were any loss of public benefit in this regard, it would be overwhelmingly outweighed by the public benefit arising from the additional housing and facilities provided as a direct result of not maintaining the standard in these circumstances.


9 Conclusion

The proposal does not strictly comply with the maximum height standard in clause 40(4) of SLSEPP.

We conclude that the objection to strict compliance is well founded because the objectives of the standard are achieved notwithstanding the non-compliance.

Strict compliance would hinder the objects of the Act because it would reduce and not promote the social welfare of the local community and the economic use of the site. It would not promote the objectives of the SLSEPP. It would also not be in the public interest since it would result in a reduction in much needed housing and services for the aged in the community without any tangible benefits in terms of environmental or other impact mitigation arising from that reduction.

The flexible application of the standard in these circumstances is appropriate as the development achieves the underlying purpose of the standard and is consistent with the aims and objectives of SEPP 1. Consequently we submit that strict compliance with this development standard is unreasonable and unnecessary and that the use of SEPP 1 to vary this development control is appropriate in this instance.

Project: 12010: St. Antonio Da Padova Village, 305 Blaxland Road, Ryde			
Document Status			
Issue	Date	Prepared By	Reviewed By
Final	5.7.12	BR	DR
Document Approval			
			
Name: David Ryan, Executive Director		Date: 5.7.12	
This document preliminary unless approved by a Project Manager / Director of City Plan Strategy & Development			



ITEM 2 (continued)

ATTACHMENT 6



ITEM 2 (continued)

ATTACHMENT 6



NOTE: REFER TO LANDSCAPE ARCHITECT'S DRAWINGS FOR LANDSCAPE DESIGN



ITEM 2 (continued)

ATTACHMENT 7

● Indicates submissions received.  
Other submissions received outside map area.



- 3 58 - 60 FALCONER STREET, WEST RYDE. LOT 1 DP 953646 and LOT 2 DP102049. Development Application for demolition , and construction of 10 strata titled town houses under the Affordable Housing State Environmental Planning Policy. LDA2012/0124.**

**INTERVIEW**

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**Report prepared by:** City Plan Strategy and Development

**Report approved by:** Manager Assessment; Group Manager - Environment & Planning

**Report dated:** 19/04/2013

**File Number:** grp/09/5/6/2 - BP13/604

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### 1. Report Summary

**Applicant:** Urban Link Pty Ltd.

**Owners:** Fadia Tohme.

**Date lodged:** 3 May 2012.

This report considers a proposal to demolish two (2) existing single storey dwellings and to construct an infill development under the Affordable Housing State Environmental Planning Policy (SEPPARH) comprising ten (10) strata titled townhouses consisting of six (6) x three (3) bedroom and four (4) x two (2) bedroom dwellings.

The proposed development consists of two terrace blocks, each with three (3) x three (3) bedroom and two (2) x two (2) bedroom units. Unit 1 which fronts onto Falconer Street is two storey. The remainder of the proposed units are 'single' storey with accommodation at attic level.

The site is located in an area that is currently under transition. The predominant development pattern is detached dwellings, though a number of multi housing developments have been completed in the vicinity of the site in recent years. The development generally complies with the relevant planning controls in the Ryde Local Environmental Plan 2010 with the exception of the density control, and so the development is being pursued under the SEPP (Affordable Rental Housing) 2009 (SEPPARH).

During the notification period, a total of three submissions objecting to the development were received (one of which included a petition signed by 29 local residents). A further fourth submission was received after the closing date.

The issues raised in these submissions can be broadly grouped as follows:

- Overdevelopment of the area and consequent social problems
- Overconcentration of multi-dwelling developments within a limited area in what is a low residential density zone

**ITEM 3 (continued)**

- Non-compliance with SEPPARH
- Non - compliance with Part 3.5 of the RDCP 2010 (Multi-dwelling developments)
- Proposed development is of a scale and bulk that is inconsistent with existing development
- Safety, security and privacy issues
- Impact of the development on adjoining properties
- Creation of substandard residential development
- Traffic generation and car parking demand arising from the development would result in a traffic hazard and
- Concerns with regard to devaluation of property as a result of the development.

The development application is recommended for refusal. It is considered that the proposal is not compatible with surrounding urban environment in terms of its relationship with the surrounding space, the loss of the regular rhythm of spaces (building and void) along the streetscape and the loss of existing vegetation. The development fails to satisfy the implied requirements that the design of the development is compatible with the character of the local area in SEPPARH.

Variations are being sought to a number of the requirements of the Development Control Plan 2010 in relation to deep soil zones, private open space, setbacks, fencing, stormwater drainage, access and driveway width and gradient.

It is considered that whilst many of the non-compliances with the quantitative standards in the RDCP 2010 are minor in scale, or are based on merit assessments of non-quantifiable criteria, the development represents an overdevelopment of the site in a low density residential area.

The collective extent of the minor variations sought to the controls would cumulatively result in a substandard development that fails to meet the minimum recommended deep soil zone provision of the SEPPARH and many of the qualitative and quantitative controls set out in the RDCP. The layout and design of the proposed development would result in a poorly planned development where the driveway, car parking spaces and garages would be visually dominant on the site. There is a lack of clarity and definition in the layout and design of the units as to which is the front and the back facade of the units. The pedestrian walkway, isolated from the development by 1.8m high fences with no public lighting would give rise to a safety concern. Inadequate setbacks, limited private open space and insufficient information on potential overshadowing raises concerns with regard to overshadowing of private open space. The elevations of the proposed development generally have poor void to solid ratios which would detract from the character of the area and would set an undesirable precedent for future residential development.

**ITEM 3 (continued)**

**Reason for Referral to Planning and Environment Committee:** Called up by Councillor Pendleton, Councillor Salvestro-Martin and the Mayor, Councillor Petch. A petition was also received objecting to the development.

**Public Submissions:** Three submissions were received objecting to the development, one of which was a representation from an MP on behalf on an objector and another which included a petition signed by 29 local residents.

**Clause 4.6 RLEP 2010 objection required?** No. Whilst the development fails to comply with the minimum site area requirements under Clause 4.5A of the RLEP (a minimum site area of 300m<sup>2</sup> per unit), an objection under Clause 4.6 of the RLEP is not required as the applicant is seeking to develop the site under the SEPP (Affordable Rental Housing) 2009 and to use Clause 14(1)(b) (Standards that cannot be used to refuse consent) to overcome this deficiency.

**Value of works?** The initial estimated cost of work was \$2,400,000.00. However as there have been modifications to the original layout and number of units (a reduction from twelve units to ten units), the actual cost of work may now be lower.

A full set of the plans is **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors - subject to copyright provisions.

**RECOMMENDATION:**

- (a) That Local Development Application No. 2012/0124 at 58 - 60 Falconer Street, West Ryde, being LOT 1 of Deposited Plan 953646 and LOT 2 of Deposited Plan 102049 be REFUSED for the following reasons:
1. The proposal is contrary to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to meet the objectives of the R2 Low Density Residential Zone in the Ryde Local Environmental Plan 2010.

**Particulars**

- a) The proposal does not ensure that *"the general low density nature of the zone is retained and that development for the purposes of dual occupancy (attached) and multi dwelling housing (attached) do not significantly alter the character of a location or neighbourhood"*.
  - b) The proposal does not ensure that *"new development complements or enhances the local streetscape."*
2. The proposal is contrary to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009.

**ITEM 3 (continued)****Particulars**

- a) The proposal is contrary to Clause 14(1) Deep soil zones.
  - b) The proposal is contrary to Clause 16A in that it is incompatible with the streetscape and character of the local area in terms of established pattern of development, setbacks, building width and landscaping.
  - c) The proposal is inconsistent with Clause 15(1) in terms of compliance with the provisions of the Department of Planning "*Seniors Living Policy: Urban Design guidelines for infill development*" in relation to responding to the context of the local area, site planning and design, impacts on streetscape, impacts on neighbours and internal site amenity.
3. The proposal is contrary to Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the provisions of the Draft Ryde Local Environmental Plan 2011.

**Particulars**

- a) The proposal is contrary to Clause 4.3(2C) Height of Buildings in Zone R2
4. The proposal is contrary to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the requirements of the Ryde Development Control Plan 2010.

**Particulars**

- a) The proposal is contrary to the objectives of Part 3.5 - Multi Dwelling Housing (attached) within the Low Density Residential Zone of the RDCP as it will:
  - Not complement existing development and streetscape
  - Result in a housing development that is not designed to a high aesthetic standard
  - Adversely affect the amenity of occupants of adjoining land and
  - Result in a multi dwelling housing (attached) development of a scale that is not related to the character of the area
- b) The proposal does not comply with the minimum floor to ceiling height requirement of Part 3.5 of the RDCP.
- c) The proposal does not comply with the side and rear setback and second street frontage setback requirements of Part 3.5 of the RDCP.
- d) The proposal does not comply with the minimum private open space area requirements of Part 3.5 of the RDCP.
- e) The garage and car parking layout dominates the development and is contrary to the provisions of Part 3.5 of the RDCP.



**ITEM 3 (continued)**

- f) The proposal does not comply with the car parking manoeuvrability or the driveway requirements of Part 3.5 of the RDCP.
  - g) The proposal is unsatisfactory with regard to the overshadowing and access to sunlight requirements in Part 3.5 of the RDCP.
  - h) The proposal has not demonstrated compliance with the accessibility requirements of Parts 3.5 or 9.2 of the RDCP.
  - i) The proposal is unsatisfactory with regard to the Building Form requirements of Part 3.5 of the RDCP.
  - j) The proposal does not comply with the fencing requirements of Part 3.5 of the RDCP.
  - k) The proposed stormwater disposal method for the site does not meet the requirements of Part 8.2 of the RDCP.
5. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development, fails to comply with requirements of Australian Standard AS2890.1-2004 with regard to the driveway width at the entrance to the development, driveway gradients, manoeuvrability in and out of garages and sightline requirements for pedestrians. The proposal would result in conflict between pedestrian and vehicular traffic and would give rise to a traffic hazard.
6. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the cumulative impacts of the proposed development's failure to comply with the provisions and requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009, Ryde LEP 2010 and Ryde DCP 2010 will result in a development whose scale, form, density and design is inconsistent with existing development in the area and detract from the character and the amenity of the locality.
7. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site.
8. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest, pertaining to the number of objections that have been received in relation to the proposal.
- (b) That the persons who made submissions be advised of Council's decision.

**ITEM 3 (continued)**

**ATTACHMENTS**

- 1 Map
- 2 A4 Plan
- 3 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Valerie Conway Planning Consultant  
City Plan Strategy and Development**

Report Approved By:

**Liz Coad  
Manager Assessment**

**Dominic Johnson  
Group Manager - Environment & Planning**

**ITEM 3 (continued)**

**2. Site** (Refer to attached map.)

**Address** : 58 – 60 Falconer Street, West Ryde



Aerial photo of subject site.

**Site Area** : 2220m<sup>2</sup> site area

(It should be noted that the site area has been a matter of dispute, with discrepancies between the Council's records (2188m<sup>2</sup>) and the area claimed by the applicant in different supporting documents (2226m<sup>2</sup>, 2303m<sup>2</sup> and 2,220m<sup>2</sup>). For the purposes of this assessment, the site area is accepted to be 2,220m<sup>2</sup>.)

- 26.82 metre frontage to Falconer Street (western site boundary)
- 84.22 metre northern / side site boundary
- 81.763 metre southern / side site boundary
- 26.935 metre frontage to Linton Lane (eastern / rear site boundary)

**ITEM 3 (continued)****Topography****and****Vegetation**

: The site is fairly level with a gradual incline from west to east. Along Falconer Street, the ground level rises by approximately 0.75m whilst the change in ground level over the length of the site is approximately 1.2 – 1.9m There are a total of six mature trees on the site that would be affected by the proposed development. It is noted that the arboricultural report submitted with the application fails to include several mature trees on the site.

**Existing Buildings**

: The site includes two single storey buildings, two fibro garages and a metal shed which are proposed to be demolished as part of the proposal.

**Planning Controls****Zoning**

: R2 - Low Density Residential

**Other**

: Local Environmental Plan 2010  
State Environmental Planning Policy (Affordable Rental Housing) 2009  
Seniors Living Policy: Urban Design Guidelines for infill development  
State Environmental Planning Policy 55 – Remediation of Land  
State Environmental Planning Policy (Building Sustainability Index: BASIX)  
Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005  
Development Control Plan 2010

**3. Councillor Representation**

Name of Councillor:	Councillor Pendleton
Nature of the representation:	Called up to the Planning & Environment Committee
Form of the representation:	Email to helpdesk on 19/2/2013
On behalf of applicant or objectors?:	Objector
Any other person (e.g. consultants) involved in or part of the representation:	No

**ITEM 3 (continued)**

Name of Councillor:	Councillor Salvestro-Martin
Nature of the representation:	Called up to the Planning & Environment Committee
Form of the representation:	Email to helpdesk on 11/3/2013
On behalf of applicant or objectors?:	Objector
Any other person (e.g. consultants) involved in or part of the representation:	No

Name of Councillor:	The Mayor, Councillor Petch
Nature of the representation:	Called up to the Planning & Environment Committee
Form of the representation:	Email to the Group Manager Environment and Planning on 25/3/2013
On behalf of applicant or objectors?:	Objector
Any other person (e.g. consultants) involved in or part of the representation:	No

**4. Political Donations or Gifts**

Any political donations or gifts disclosed? No disclosures.

**5. Proposal**

The proposal is seeking approval to demolish two (2) existing single storey dwellings and to construct an infill development under the Affordable Housing State Environmental Planning Policy comprising of ten (10) strata titled townhouses consisting of six (6) x three (3) bedroom and four (4) x two (2) bedroom dwellings.

The development consists of two terrace blocks, each with three (3) x three (3) bedroom and two (2) x two (2) bedroom units. Unit 1 which fronts onto Falconer Street is two storey. The remainder of the units are single storey with accommodation at attic level.



### ITEM 3 (continued)

The site is accessed by a 6m wide driveway which runs west to east across the site. The driveway is set back 1.2m from the southern site boundary with a small pocket of common open space at the end of the internal driveway. The units are located to the north of the driveway with single garages (except for unit 1 which has a double garage) and uncovered car parking spaces accessed from the driveway. The units front onto areas of private open space which are accessed from a 0.9m wide access path which runs along the northern boundary of the site. This common access path which is enclosed by 1.8m high fencing runs from Falconer Street to Unit no 9. There is a pedestrian access and vehicular access to unit no 10 from Linton Lane.

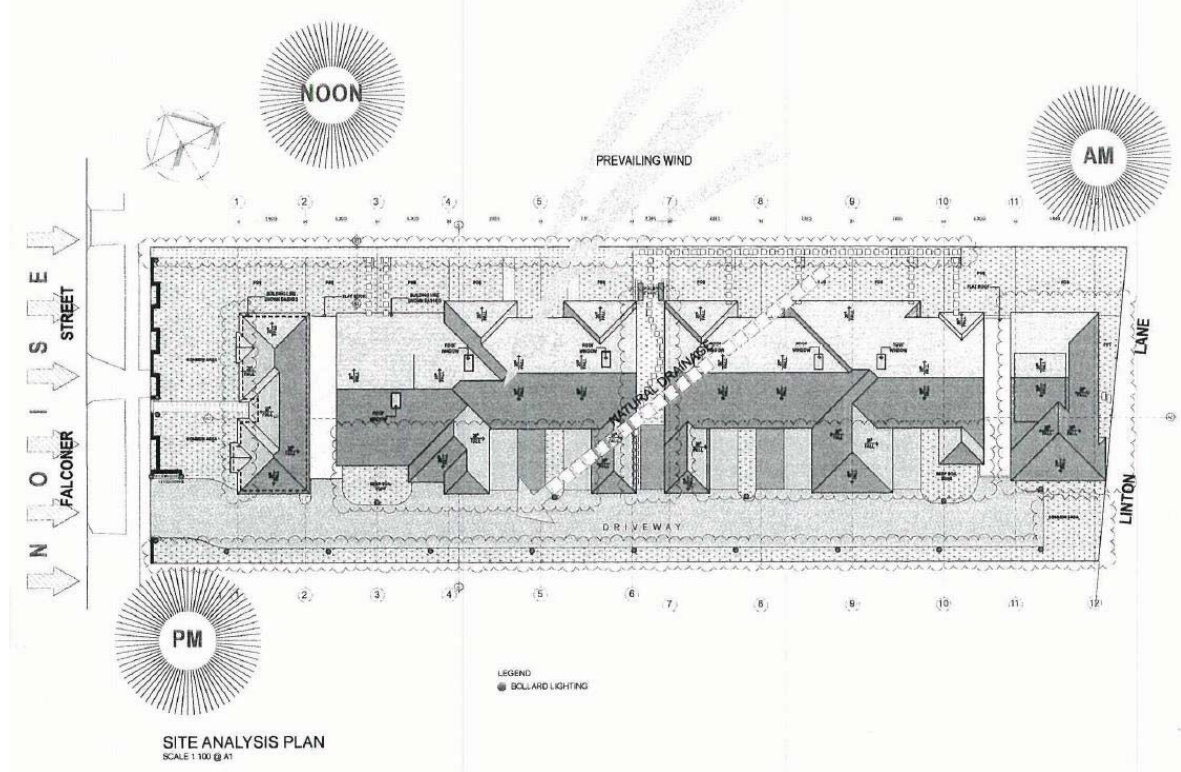
The three bedroom units have two car parking spaces (double garage or single garage and uncovered car parking space) while the two bedroom units have a single garage. There are three visitor car parking spaces giving a total car parking provision of nineteen spaces. Waste (garbage and recycling) storage facilities and clothes drying lines are to be provided in the private amenity space of each unit.



Figure 1: Existing streetscape

Source: Googlemaps streetview

**ITEM 3 (continued)**



**Figure 2 - Proposed Layout**

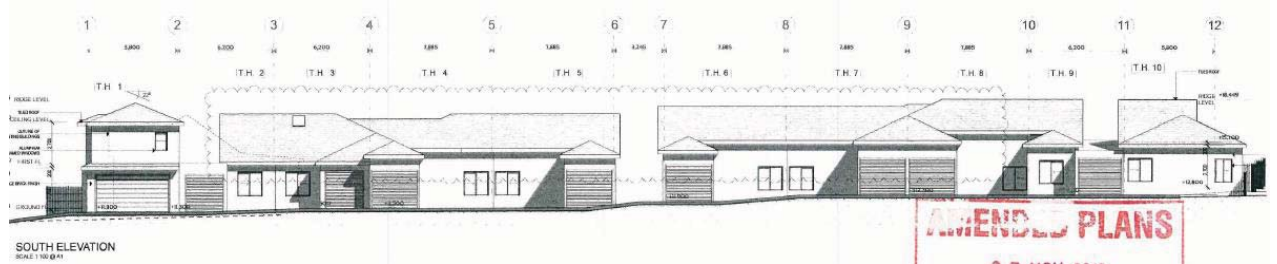


**Figure 3 – Elevation onto Falconer Street**



**Figure 4 – Northern elevation**

**ITEM 3 (continued)**



**Figure 5 – Southern elevation**



**Figure 6 – Elevation onto Linton Lane**

The current plans are the result of a series of amendments to the original plans submitted on 3 May 2012 in which twelve dwellings (two storey and single storey) were proposed. The current proposal relates to ten units – one x two storey unit fronting onto Falconer Street and nine single storey units (with attic accommodation).

**6. Background**

There is no evidence of any pre-lodgement meetings in relation to this development.

The subject LDA was lodged with Council on 3 May 2012. The original application was for demolition of two existing dwellings and the construction of twelve townhouses (in two terraced blocks with two storey elements fronting onto Falconer Street and Linton Lane).

Following a preliminary assessment of the application, various non-compliances were identified. The following issues were raised via a letter to the Applicant dated 24 May 2012 (which included a compliance checklist).

**RLEP 2010**

- Height and FSR exceed LEP.
- Site area discrepancies between Council records and applicant’s survey.

**ITEM 3 (continued)**SEPPARH

- Landscape area < 50%.
- Deep soils zone not located in rear 2/3 of site.
- Proposal out of context with area, particularly both two storey elements.
- Housing mix not adequate.
- Landscaping on both sides of driveway inadequate.
- Setback inconsistent.
- Privacy/ overlooking issues.
- Location of garages relative to bedrooms.
- Entries to dwellings off driveway poorly designed.
- Design incompatible with character of the local area – dwellings 2-4 & 9-12 should be single storey. Many exceed height requirements.

RDCP Part 3.5 - Multi Dwelling Housing (for Low Density Residential Zone)

- Linear separation from villa/duplex/urban housing development.
- Excessive density.
- Dwelling mix 83% while 75% allowable.
- Height and storeys exceed controls.
- Site coverage & pervious area calculations questionable.
- Front setback 6m (9.2m or 6.5m – 7.6m at Council discretion).
- Northern boundary setback 3.2m (3m – 4.5m required).
- Private Open Space inadequate.
- No separate access to POS for eight dwellings.
- Inadequate landscaping along driveway.
- No visitor parking – 4 spaces required.
- Driveway paving excessive.
- Balconies on first floor prohibited.
- Eaves overhang less than 300mm.
- Hip on front elevation where gable required.
- Front fence materials not clear.
- Details of rear and side fences not clear, elevation of rear fence required
- Waste (garage and recycling) facilities not provided.
- Reference made to Moscaritolo v City of Ryde which does not support the building form proposed or the two storey element of the development at the rear of the site.



**ITEM 3 (continued)**Engineering details required:-

- Driveway width should be widened to 5.5m at boundary to a point 6m into the site.
- All dimensions should be provided including width of the driveway at various locations.
- Demonstrate adequate turning areas into and out of garages, particularly for unit 12.
- Stormwater pit on Falconer St needs to be relocated – Drainage plan to show details.
- Correct location of the power pole adjoining driveway on drainage plan to be shown. Amount of runoff directed to the kerb is excessive and exceeds 30l/s. Pipe should be connected to the pit. The outlet pipe cannot be directed to a lay back.
- Volume of the OSD tank to be increased to accommodate the total impervious & pervious runoff directed into the tank.
- Levels across the footpath are excessive. Applicant to contact Council's Public works Department to get driveway crossing levels & show on plans. This must be done prior to the submission of any amended plans as it will affect driveway levels.
- Runoff from the upstream catchment to be directed to the street separately or basin should be designed to accommodate the additional runoff.
- Courtyard pergolas are proposed at the back and there is a likelihood that the owners will install paving under these area - question as to whether these are needed or whether the area should be included in the pervious areas calculations.
- Despite the BASIX's exclusion of water tanks, consideration to be given to providing a water tank for each dwelling for water reuse.

Amended plans were received by Council on 14 August 2012. The amended plans decrease the number of units from twelve to ten, whilst reducing the height of units so that only units 1 and 10 are two storeys and the remainder appear to be single storey (but have accommodation at attic level). The garage/carport/bedroom arrangement on the ground floor was also altered. An access path was proposed through the private open space to provide pedestrian access to each of the units through the POS. The separation distance between the two blocks was decreased marginally and communal bin facilities located here. Correspondence submitted with the amended plans suggested that some, though not all, of the issues raised by Council Officers were addressed.



**ITEM 3 (continued)**

The amended plans of 14 August 2012 were not notified. The amended plans were assessed by Council Officers and the applicant was issued with a further request for additional information on 11 October 2012. Some of the issues raised in the initial letter remained outstanding.

Council's letter of 11 October 2012 (which included an updated compliance checklist) raised the following issues of non-compliance/deficiencies in the application:

RLEP 2010

- Site area discrepancies between Council records and applicant's survey (Council's records show a total site area of 2188m<sup>2</sup>).

SEPPARH

- Units available for Affordable housing not indicated on the amended plans.
- Landscape area only 22.37% by Council calculations (<30% required). Calculations to be provided.
- Deep soils zone not located in rear 2/3 of site but to the north of the site where likely to overshadow living areas and courtyards.
- Number of two and three bedroom units below the minimum dwelling size.
- Proposal out of context with area, particularly the two storey element fronting the land and the minimal separation of the buildings. The rear land should be treated as a rear entrance and not a secondary frontage that mostly applies to corner allotments. Consideration to be given to single storey building, close to Linton Lane (its garage could be off the lane) with its main access from Falconer Street. If the building was moved closer to the Linton Lane it would provide a better separation between dwellings 5 & 6.
- Rear 2/3 of development not single storey.
- Communal garbage area poorly located and not roofed. Consideration to be given to individual storage in courtyards or garages.
- Landscaping on both sides of driveway inadequate, driveway visually dominant.
- Communal pathway along northern side of site must be excluded from individual dwellings & form part of common property. The feature requires reconsidering as in its present form it impacts on solar access especially if it is to be planted with tall growing vegetation, reduces courtyard size and security issues.

**ITEM 3 (continued)**RDCP Part 3.5 - Multi Dwelling Housing (for Low Density Residential Zone)

- Linear separation.
- Excessive density.
- Site coverage possibly complies as Council estimate 39.77% and applicant 40% - calculations to be shown on plan.
- Pervious areas should be 35% - Council calculate it to be 22.37% and applicant 35.69%. Pervious area calculations include paths – only acceptable if pervious (50% allowance).
- Many courtyards have less area than required. The common path on the north side to be excluded.
- Landscaping along driveway is inadequate, driveway paving excessive, not visually broken up by landscaping.
- No visitor parking – 3 spaces required.
- Balconies on first floor prohibited.
- Disability access details inadequate. Two dwellings shown as disabled but other aspects of disabled accessibility not clear.
- Front fence materials not clear whether 70% open.
- Details of fence along Linton Lane missing.
- Waste (garage and recycling) bin facilities not in suitable location. Consider individual courtyards or garages.

BASIX

- Updated certificate required.
- Relevant details to be shown on plans.

Subdivision

- The details on the subdivision plans do not appear to match the site plan. Applicant requested to clarify if the open space areas off the driveway were included in the adjoining dwelling. This may assist in addressing courtyard areas. The subdivision outline should be shown on a site plan.

On 27 November 2012, the applicant was issued a third letter and advised that since Council's letters of 24 May 2012 and 11 October 2012, satisfactory details were not submitted. The applicant was advised that if the requested information was not submitted within seven days the application would be assessed on the information/details in with Council.

**ITEM 3 (continued)**

Amended plans were received by Council on 27 November 2012. As in the plans submitted on 14 August, the number of dwellings remains at ten. Unit 10 facing onto Linton Lane has been reduced to single storey (again with accommodation at attic level). The garage/car parking space arrangement was amended to provide for single garage to all units but unit 1 with some uncovered car parking spaces to provide for visitor and resident parking. This has allowed for a realignment of the driveway and the provision of a landscaped strip along the southern boundary of the site between the driveway and the adjoining site (62 Falconer). Unit 10 is located closer to Linton Lane with vehicular access to the garage serving unit 10 off the lane. The relocation of unit 10 closer to Linton Lane allows for an increase in the separate distance between the two blocks. The communal bin storage area has been removed by providing bin facilities in the private open space of each of the units. An access path is proposed along the northern boundary.

The applicant advised that:

- The site area is now 2220m<sup>2</sup>.
- Units 3 and 4 are available for Affordable Housing.
- 30% landscape area demonstrated.
- Deep soil zone maximised in the rear 2/3 of site.
- Dwellings sizes meet minimum area required under AHSEPP.
- Unit 10 reduced to single storey and relocated closer to Linton Lane.
- Separation distance between blocks increased to approximately 3m.
- Bins relocated to rear private open space.
- Landscaping on both sides of driveway increased with 1.2m setback from boundary.
- Communal access path excluded from POS and now forms part of common area.
- 40% site coverage achieved by minimising garage floor space.
- 35% pervious areas.
- 3 visitor car parking spaces provided.
- Balconies on the first floor removed.
- Disability access details shown on the amended plans.
- 1.8m high fence proposed along Linton Lane boundary.
- A revised BASIX certificate and strata plan submitted.

Revised landscaping plans and Site & Roof Drainage plan was submitted by applicant on 15 January 2013. The application was advertised/notified and the amended plans referred to Council's Consultant Development Engineer and Council's Consultant Landscape Architects.

**ITEM 3 (continued)**

Revised shadow diagrams were submitted by the applicant on 7 February 2013.

The submission period closed on 27 February and three submissions were received during this period. One of these submissions included a petition signed by 29 signatures.

The amended plans submitted to Council on 27 November 2012 and supplemented by additional plans submitted on 15 January 2013 and 7 February 2013, are those currently under consideration.

**7. Submissions**

The proposal was advertised and notified in accordance with Development Control Plan 2010 - Part 2.1, Notification of Development Applications. The application was advertised on 6 February 2013. Notification of the proposal was from 5 February 2013 to 27 February 2013.

During this period, three submissions were received, one of which was an MP's referral of a resident's objection, which was also made separately. The third objection included a petition signed by 29 local residents. A fourth submission was received after the closing date.

The issues raised in the submissions are discussed below.

- *Compatibility with SEPPARH and the Seniors Living Policy; Urban Design Guidelines for Infill Development*

The objection notes that the development does not comply with Clauses 15 or 16A of the SEPP which requires an assessment of the development relative to the provisions of *Seniors Living Policy; Urban Design Guidelines for Infill Development* and the character of the local area. It states that the SEPPARH standards in relation to deep soil zones are also not satisfied.

**Response:**

Clause 16A of the SEPPARH requires a consideration as to whether the design of the development is compatible with the character of the local area. In *McKees Project Management Pty Ltd v Warringah Council (2012) NSWLEC 1213*, it was submitted that the question of "compatibility" under the SEPPARH could be considered having regard to the following matters:

- *Determine the local area.*
- *Identify the desirable elements of the character of the local area.*
- *Identify how the design of the development responds to or reinforces those desirable elements.*

**ITEM 3 (continued)**

- *Understand the expectations created by the Council's controls relating to built form and character.*
- *Consider the expectations created by the SEPP and how that affects the question of compatibility.*

It is considered that this is a reasonable approach to address the question of compatibility with the character of a local area as required under the SEPPARH. Set out hereunder is an assessment of these matters:

*What is the local area?*

Having regard to the street hierarchy, the residential nature of the area and the block and lot sizes, the local area can be reasonably considered to be primary visual catchment of the site.

*What are the desirable elements of the character of the local area?*

The existing character of the 'local area' is predominantly one storey detached dwellings with pitched roofs in a garden setting. It also includes two multi unit dwelling developments of one and two storeys. Existing single storey dwellings are being replaced with larger two storey dwellings along Falconer Street and nearby Parkes Street.

The desirable elements of the existing character include front setbacks containing gardens and buildings dispersed amongst landscaped settings and an established lot pattern with a regular rhythm of buildings and landscaping.

*How does the design of the development respond to or reinforce those desirable elements?*

In this regard, McKees Project Management Pty Ltd v Warringah Council has regard to the planning principles in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191 (Refer to an assessment of the proposal below having regard to the principles set out in this case wherein it is considered that the proposed development does not respond to the essential elements of the existing character of the 'local area' by virtue of its mass and width when viewed from the street, setbacks and subsequent disruption to the lot and development patterns and the loss of landscaping).

*What are the expectations created by the Council's controls relating to built form and character?*

The area is undergoing transition to the extent that existing, generally small/modest, mainly single storey dwellings are being replaced by larger, mainly two storey dwellings which have a greater scale and tend to be more prominent in the



**ITEM 3 (continued)**

landscape. Despite this change in dwelling scale, the desired future character in Low Density Residential Area as sought by Council in its expression of the R2 zone objectives in the RLEP 2010 is one which seeks to “*ensure that the general low density nature of the zone is retained and that development for the purposes of dual occupancy (attached) and multi dwelling housing (attached) do not significantly alter the character of a location or neighbourhood*”. Therefore whilst the RLEP allows for multi-dwelling developments in Low Density Residential Areas, the expectation is that they would be dispersed. This proposal concentrates multi-dwelling developments in a local area.

*What are the expectations created by the SEPP and how that affects the question of compatibility?*

The proposal does not comply with the recommended minimum provision of deep soil zones as set out in Clause 14(1)(d) of SEPPARH. In accordance with Clause 15(i) of SEPPARH, the Senior Living Policy; Urban Design Guidelines applies to the development. A discussion of the extent of non-compliance of the proposal with these Guidelines is detailed in **Table 3** of the Compliance Tables.

It is therefore considered that the design of the proposed development and the resultant changes to the streetscape in terms of massing, setbacks and landscaped settings, is not compatible with the character of the ‘local area’. The degree of incompatibility arising from the proposed design and layout is such that the development application should be refused.

*Compatibility in the urban environment - Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*

The meaning of ‘*compatible*’ in this context is taken to be ‘*capable of existing together in harmony*.’ The principle notes that compatibility is different from sameness, and that where compatibility between a building and its surroundings is desirable, its two major aspects are physical and visual impact. To test whether a development is compatible with its context, two questions should be asked:

- Are the proposal’s physical impacts on surrounding development acceptable?
- Is the proposal’s appearance in harmony with the buildings around it and the character of the street?

The Planning Principle recognizes that the physical impacts such as noise, overshadowing, etc can be assessed objectively. In this case they are identified in the Compliance Tables attached to this report (noise impact on adjoining properties as a result of vehicular and pedestrian traffic, etc). The acceptability of such impacts on neighbouring properties is addressed below.

### ITEM 3 (continued)

In contrast, it is acknowledged that determining whether a new building appears to be in harmony with its surrounding is a more subjective test. However, it was put forward in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191 that analysing the existing context and then testing the proposal against it can reduce the degree of subjectivity involved.

The Planning Principle states that “*for a 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 area.*” In the absence of planning instruments or urban design studies which describe the urban character, the Planning Principle states that the most important contributor to urban character is “*the relationship of the built form to surrounding space, a relationship that is created by building height, setbacks and landscaping.*”

#### Building Height

The proposal complies with the maximum building height provisions set out in the RLEP 2010 (though not in the Draft LEP 2011 – Refer to Section 9(c)i). Whilst Unit 1 which fronts onto Falconer Street is two storey, it is not considered that the height differential between it and the adjoining developments is such that would render in incompatible in the streetscape.

#### Setbacks

The development is proposed to be set back from Falconer Street such that it will lie 1.6-1.7m forward of the adjoining dwellings. The regular rhythm of spaces (building and void) along the streetscape will be disrupted by a layout which proposes to centre the new development in what is currently two regular sized lots whereby increasing both the mass and width of the development and the width of the void. Whilst the RLEP does not discourage the amalgamation of lots, the width of the site here is such that the pattern of development will erode the desired elements of the character of the area.

#### Landscaping

Whilst there is some on-street tree planting along Falconer Street, there are no significant trees to the front of the site.

It is proposed that much of the onsite planting and tree cover would be removed to accommodate the proposed development, including that along the site boundaries. Whilst it is proposed to provide a landscaping strip along the southern boundary of the site, the limited area and the proximity to the driveway, will preclude the planting of canopy trees or significant landscaping there. Equally, despite the request from Council Officers that a walkway be provided along the northern site boundary, it is

**ITEM 3 (continued)**

considered that its layout and boundary treatment is such that it will preclude the provision of any landscaping at this location.



**Figure 7: Existing landscaping visible from the public domain.**

In this regard, it is worth referring to *Wombarra Pty Ltd v Wollongong City Council* (2003) NSWLEC 268 which established the following principle for assessing compatibility of a medium density development in a low density area: “*where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved*” and “*it is preferable to preserve existing vegetation around a site’s edges to destroying it and planting new vegetation.*” Applying this principle, if the existing pattern of vegetation was preserved, the proposal’s dominance would be reduced. The proposal involves the removal of most of the site’s vegetation and even with replanting, which may take years to establish, will render the development incompatible in terms of the existing landscape patterns in the area.

Building Width

*Wombarra Pty Ltd v Wollongong City Council* (2003) NSWLEC 268 also establishes the principle that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Whilst the applicant has broken the development up across the length of the site, the width of the unit at the street frontage is significantly greater than that of adjoining buildings. The alteration to the established setbacks exacerbates the streetscape impact.

**ITEM 3 (continued)**Compatibility

It is considered that the proposal has not responded to the surrounding context or pattern of development - with regard to its compatibility with the streetscape or character of the area in terms of setback, rhythm of development or landscape setting.

Whilst the precedent has been established for multi unit developments in the immediate vicinity of the site, there are concerns that further lot consolidation and sub-optimal multi-unit development in close proximity to these existing developments, will erode the predominant lot pattern in the area and detract from the low density character of the area.

- *Planning precedent and Land & Environment Court Principles*

The objector considers that the proposal fails the test of compatibility established in Project Venture Developments Pty Ltd v Pittwater Council (2005) NSWLEC 191 at (points) 22-31 for reasons outlined in the submission and in regard to design and impact on neighbouring properties established in Pafburn v North Sydney Council (2005) NSWLEC 44 at (point) 26.

**Response:**Test of compatibility with the Character of the Local Area.

The test of compatibility established in Project Venture Developments Pty Ltd v Pittwater Council (2005) NSWLEC 191 referred to here is addressed above in relation to the compliance of the proposal with the SEPPARH above.

Criteria for the assessment of impacts on neighbouring properties

The second principle to which the objection refers; *Pafburn v North Sydney Council (2005) NSWLEC 44*, related to criteria for the assessment of impacts on neighbouring properties. It identifies five common themes that run through previous planning principles which can be applied to the assessment of impacts on neighbouring properties.

*“The first theme is that change in impact may be as important as the magnitude of impact.”*

*“The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it. An impact that arises from a reasonable or necessary proposal should be assessed differently from an impact of the same magnitude that arises from an unreasonable or unnecessary proposal.”*

*“The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact.”*



**ITEM 3 (continued)**

*“The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it. “*

*“The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”*

The Planning Principle sets out a set of questions that are generally relevant to the assessment of all forms of impact in neighbouring properties:

- How does the impact *change* the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?
- How necessary and/or reasonable is the proposal causing the impact?
- How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?
- Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?
- Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?

To assess the proposal in terms of the themes outlined above, particularly with regard to its potential impact on 62 Falconer Street (the adjoining southern property) the impacts of the development (traffic noise, overshadowing of dwelling and private amenity space, the creation of a sense of enclosure by being surrounded on two sides by medium density development) were considered against:

- The change in the amenity of the property (increase in overshadowing of dwelling and private open space, likely increase in noise intrusion, perceived sense of enclosure by medium density developments, etc)
- the necessity for and reasonableness of the proposal;
- the skill and consideration in designing a proposal to reduce adverse impacts;
- its degree of compliance of the proposal with the planning controls; and
- the vulnerability of the site in terms of its potential location between two medium density developments.

In this regard, it is considered that the proposed development fails to demonstrate that the potential impacts on neighbouring properties are acceptable.

- *Detrimental to the character of the area*



**ITEM 3 (continued)**

The objectors state that the proposal is out of character with the area which accommodates predominantly single storey dwellings, with some multi-dwelling developments which have been developed in accordance with Council's Guidelines. It fails to add to the amenity of the community by:

- Replacing two Federation style dwellings with a building of unprecedented scale and density.
- Failing to comply with Council's Guidelines.
- Providing only two affordable rental housing units in a development designed for maximum commercial benefit and
- Reduces resident safety and increases the potential for crime and antisocial behaviour.

**Response:**

As outlined above in response to the question of compliance of the proposal with the SEPPARH and in **Table 3** of the Compliance Tables, the proposed development is considered to be out of character the local area. The density of the development is excessive, a fact which is further exacerbated by the proximity of the site to two existing multi-dwelling developments.

Whilst unlit walkways enclosed by 1.8m high fences, common areas which are not overlooked by dwellings and pedestrian access onto an unlit narrow lane may not be optimal in terms of CPTED, there is nothing to suggest that the development would encourage anti-social behaviour and resident/visitor safety. The number of affordable housing units is consistent with the SEPP.

- *Ryde Draft LEP 2011*

The objectors note that the application or the Statement of Environmental Effects does not address the provisions of the Draft RLEP 2011. They state that the pertinent provision of the DLEP that would affect the proposal is the requirement that dwellings in a multi-dwelling development not having a street frontage would have a maximum height of not more the 5m (Clause 4.3(2C)). The objector notes that units 2 to 10 would all exceed this proposed control.

**Response:**

As noted by the objector, it would appear that the motivation behind the proposed change to the maximum building height in such circumstances is to limit the mass and height of dwellings set back from the street frontage and to eliminate or reduce the potential for overlooking or overshadowing. Consideration of the proposal under the Draft RLEP 2011 is set out below in Section 9(c)(i).

**ITEM 3 (continued)**

- *Proposal does not comply with Council's Multi-housing DCP 2010.*

The objectors note that the development, regardless of any layout changes, can never comply with the Council's control in relation to the separation of medium density development (Control 2.4 Separation of medium density developments in the Residential A zone (Linear Separation)).

**Response:**

It is noted that the SEPPARH explicitly allows for this type of development in this location and overrides the Council controls in the event of any inconsistency.

It is further noted that with the recent adoption of the Draft RLEP by Council, which is now certain and imminent, this provision, which is not included in the Draft DCP, is no longer a relevant consideration for this DA as Council has effectively abandoned this provision.

- *Density*

The objectors contend that the replacement of two federation style dwellings with a development incorporating 26 bedrooms and 19 car parking spaces is an overdevelopment of the site.

**Response:**

Whilst the Density controls in the LEP (4.5A) are being breached (a minimum site area of 3,000m<sup>2</sup> is required for a development of 10 units, yet the site area is only 2,220m<sup>2</sup>), the applicants are seeking to rely on the provisions of SEPPARH to overcome this issue. The SEPP sets out a number of controls which cannot be used to refuse consent for a development in which at least 20% of the development is being made available for affordable rental housing (clause 14). One such reason relates to site area, being that the Consent authority cannot refuse consent where the site area is at least 450m<sup>2</sup>.

However this does not overcome the issue of potential overdevelopment of a site. Based on the current design, the subject site simply does not have the capacity to accommodate ten units which meet the minimum requirements for the site in relation to minimum private open space, deep soil zones, setbacks, etc. In this design, the driveway and car parking provision dominate the layout, the deep soil zones are inadequate incidental areas left over after the car parking and access requirements are met. It is therefore considered that the proposal is an overdevelopment of the site.

### ITEM 3 (continued)

- *Overdevelopment of site and resultant impact on 62 Falconer Street*

The residents of 62 Falconer Street note that they have a development of six villas to the south of their property and, if the current proposal is approved, will have a development of an additional ten units to the north, being effectively 'sandwiched' between two medium density developments in what is a low density resident area.

#### **Response:**

As the Draft RLEP 2011 has recently been adopted by Council and the corresponding Draft DCP omits the control requiring a minimum linear separation between multi dwelling developments in a low density residential area, there is no longer a quantifiable distance between multi-dwelling developments which is considered acceptable. Rather each case must be assessed on its merits.

As outlined above, the criteria for the assessment of impacts on neighbouring properties identified as a Planning Principle in *Pafbun v North Sydney Council (2005) NSWLEC 44* indicates that the proposed development would have an adverse impact on the residential amenity of 62 Falconer Street, including the perceived sense of isolation as a result of being located between two medium density within a low density residential zone. Property owners or occupants have a reasonable expectation that future development would comply with the zone objectives which includes seeking to "*ensure that the general low density nature of the zone is retained and that development for the purposes of dual occupancy (attached) and multi dwelling housing (attached) do not significantly alter the character of a location or neighbourhood*".

- *Overshadowing and secondary issues*

The objectors note that shadow diagrams show overshadowing of 62 Falconer Street during the mornings which will have an effect on passive heating of the dwelling. The secondary issue relates to the bulk of the proposed development and the insufficient landscaping which the objectors state will result in a loss of privacy and requirement on them to provide landscaping to screen the development.

#### **Response:**

Whilst the shadow diagrams do show overshadowing of 62 Falconer Street at 9am, it appears that the dwelling will still have access to a minimum of 3 hours of solar access between 9am and 3pm on 21 June (mid winter).

**ITEM 3 (continued)**

Of more concern, is the impact of noise transmission and light pollution resulting from the proximity of the proposed driveway and associated lighting to the adjoining property. The applicants have not demonstrated that adequate mitigation measures would be put in place, in terms of landscaping, noise proofing of boundary treatments or light standard height, angle or placement, to ensure that the residential amenity of the adjoining property is not eroded as a result of noise intrusion or light trespass. These issues could however be mitigated by condition if consent were to be granted.

- *Safety, Security and Privacy issues*

The objectors state that insufficient attention has been paid to preserving the privacy and security of 62 Falconer Street which will be compromised as a result of the adjacent (higher level) driveway separated from their property by standard fencing and a low level, narrow landscaping strip. The owners of 62 Falconer Street also have concerns with regard to the effects of noise and headlights from traffic using the proposed driveway which they state will impact on their bedrooms and living areas. The lack of dwelling entries from this driveway raises concerns in relation to surveillance and subsequently safety and security.

**Response:**

The issue of the impact of the proposed driveway on No 62 Falconer Street is addressed above (*Overshadowing and secondary issues*). The concerns in relation to the lack of interconnectivity and potential for surveillance between the proposed driveway and the dwellings is noted and considered to be a reasonable concern.

- *Development on Linton Lane*

The objectors claim that the proposal to address one of the units onto Linton Lane (which is unlit, without a footpath and primarily used for vehicular access to garages) further demonstrates the security and poor design issues associated with the development.

**Response:**

Whilst there are a number of dwellings fronting onto Linton Lane, they are located closer to the junctions of Linton Lane with Herbert Street and Parkes Street. Therefore the precedent of dwellings fronting onto this lane has been established. However, if consideration were to be given to the development of the site with a dwelling fronting onto this lane (which appears to be primarily used for vehicular access to garages and the rear of site), the dwelling should be set back further from the site boundary/road edge, the 1.8m high fencing would need to be revised and pedestrian access from the dwelling back through the site onto Falconer Street should be provided. The current proposal results in a dwelling effectively isolated from the remainder of the site, enclosed by 1.8m high fences setback just 1.1m to 2.2m from the front elevation of the dwelling (and living area windows), accessing onto a narrow lane with no footpath or public lighting.

**ITEM 3 (continued)**

- *Compliance of attic level accommodation with BCA requirements and minimum floor to ceiling heights.*

The objection notes that bedroom provision at attic levels in units 2-10 will be substandard in terms of floor space, floor to ceiling height, solar access and ventilation.

**Response:**

The information provided in relation to floor to ceiling heights at attic level is scant, but it is apparent that a number of the units have attic floor to ceiling heights of less than 2.7m. Without clear cross sections through the attic level demonstrating floor to ceiling height, it is not clear if a floor-to ceiling height of 2.2m can be achieved for no less than 2/3 of the floor area (as required by the BCA). Having regard to low pitch of the roof (25 degrees) there are concerns that sufficient head room can be achieved.

In the absence of any details on the roof lights at attic level the objectors' concerns in relation to inadequate solar access and ventilation are reasonable.

- *Plan Deficiencies*

The objection notes that there are discrepancies between plans and supporting documentation particularly with regard to the site area which impacts on landscaped area, deep soil zones and floor space ratio.

**Response:**

The discrepancies are noted. For the purposes of calculating landscaped area, deep soil zones and FSR, a site area of 2,220m<sup>2</sup> has been used. (Refer to Compliance Tables for further details on discrepancies in terms of landscaped area, deep soil zones and private amenity area calculations).

- *Assessment of DA*

The objection questions whether the DA should have been refused initially having regard to the number of changes to the plans and the time elapsed between lodgement and notification.

**Response:**

This is noted.



**ITEM 3 (continued)**

- *Car parking and traffic generation*

One objection considers that the car parking provision to be excessive and contrary to the principles of the SEPPARH which encourages public transport usage, whilst another has concerns that the development will give rise to car parking demand over that proposed onsite, which they consider will impact on the demand for on-street car parking. The latter objection also relates to concern with traffic generation from the development and the resultant traffic hazard which would be created.

**Response:**

The point in relation to car parking provision is noted. Whilst the extent and layout of the car parking provision dominates the site and what should be the activation zone between the dwellings and the driveway, it is noted that the applicant was requested to provide visitor car parking in a previous request for further information and this request was complied with.

In terms of traffic generation, it is noted that Council's Consultant Development Engineer, whilst having objections to the development in terms of traffic safety as a result of manoeuvrability in and out of garage, driveway gradients and driveway width at the entrance, has not raised any concerns in relation to traffic capacity on the adjoining road network.

- 8. Clause 4.6 RLEP 2010) objection required?** No – whilst the proposal does not comply with Clause 4.5A Density under RLEP 2010, the proposal is submitted under the provisions of the Affordable Rental Housing State Environmental Planning Policy (SEPPARH).

Clause 4.5A states

*"4.5A Density controls for Zone R2 Low Density Residential*

- (1) The consent authority must not consent to the erection of multi dwelling housing (attached) on land in Zone R2 Low Density Residential unless:*
- (a) the site area for the building is not less than:*
    - (i) for each 1, 2 or 3 bedroom dwelling—300 square metres, and*
    - (ii) for each 4 or more bedroom dwelling—365 square metres, and*
  - (b) each dwelling will have its own contiguous private open space and separate access to that space from an unbuilt portion of the site."*

Compliance with the control would require a minimum site area of 3,000m<sup>2</sup>, however only 2,220m<sup>2</sup> is being provided.

**ITEM 3 (continued)**

The non-compliance in the site area would result in a significant shortfall of 780m<sup>2</sup> or 26% of the required minimum site area. However, the applicant is relying on the Affordable Rental Housing State Environmental Planning Policy (SEPPARH) to overcome this non-compliance. The applicant is seeking to overcome this breach having regard to Clause 14(1)(b) of the SEPPARH, which states that site area cannot be used as a reason for refusal where the site area on which it is proposed to carry out the development is at least 450m<sup>2</sup>. Therefore a Clause 4.6 RLEP 2010 objection is not required to be submitted.

**9. Policy Implications****Relevant Provisions of Environmental Planning Instruments etc:****(a) Local Environmental Plan****i. Ryde Local Environmental Plan 2010****Zoning**

The site is zoned R2 Low Density Residential Development under the provisions of the LEP 2010. Multi-dwelling housing is permitted in this zoning with consent.

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. As set out in Clause 2.3 of the RLEP, the objectives for the R2 Low Density Residential are as follows:

- *“To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that the general low density nature of the zone is retained and that development for the purposes of dual occupancy (attached) and multi dwelling housing (attached) do not significantly alter the character of a location or neighbourhood.*
- *To ensure that new development complements or enhances the local streetscape.*
- *To maintain on sites with varying topography the two storey pitched roof form character of dwelling houses and dual occupancy (attached) developments.*
- *To ensure that land uses are compatible with the character of the area and responsive to community needs.”*

### ITEM 3 (continued)

Whilst the development would provide for the housing needs of the community, it is considered that the development is generally not compliant with the above objectives.

The development is not a low density development and nor will it retain the low density nature of the area. Though the character of the area is changing with the introduction of some two storey structures into the streetscape, it is further considered that the development will neither complement nor enhance the streetscape. Furthermore the layout of the development, where the driveway and car parking provision dominates the public domain would do little to contribute to the streetscape character.

The design of the units, particularly from the southern elevation, presents a weak internal facade to the development with a poor solid to void ratio and where garage doors dominate the facade.

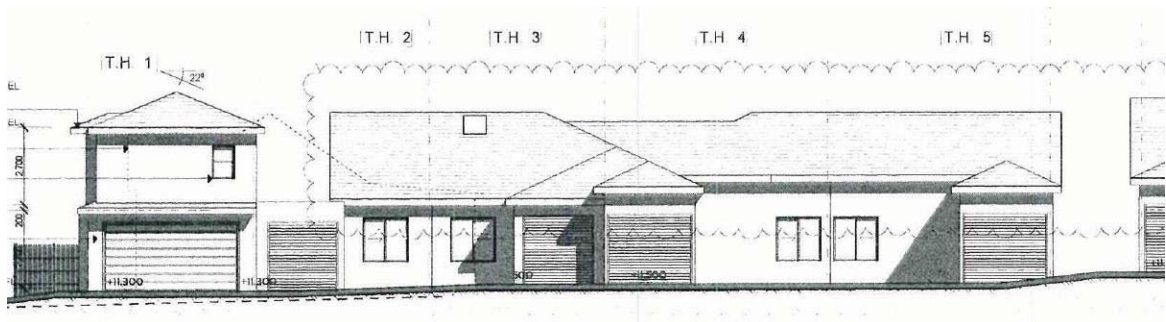


Figure 8: Southern elevation of development which faces onto the proposed driveway.

### Mandatory Requirements

#### Clause 4.3(2A) Height of Buildings

In accordance with this clause the maximum height of multi dwelling housing (attached) in Zone R2 Low Density Residential is 6.5 metres for dwellings in the building that do not have a frontage to the street and 8 metres for dwellings with a frontage to the street (where the adjoining lots contain dwelling houses that are less than 9.5 metres high). The proposal (as amended) complies with this control.

#### Clause 4.4(2) and 4.4A(1) Floor Space Ratio

In accordance with Clause 4.4(2) the maximum FSR for the site is 0.5:1. Clause 4.4A(1) clarifies that in Zone R2 Low Density Residential this maximum FSR applies only to development for the purposes of a dwelling house or dual occupancy (attached).

The FSR of the proposed development (which originally consisted of 12 units but was subsequently reduced to 10 units) is now 0.42:1.

**ITEM 3 (continued)**Clause 4.5A Density Controls for R2

The matter of non-compliance of the proposed development with this control is addressed in Section 8 above.

Clause 5.9 Preservation of Trees or Vegetation

This clause applies to species or kinds of trees or other vegetation that are prescribed in the DCP and which a person must not ringbark, cut down, lop, remove, injure or wilfully destroy without the authority conferred by development control or a permit granted by the Council.

The application is accompanied by an arboricultural report which details three trees on the site which are to be removed to accommodate the proposed development, however, there are a number of additional mature trees on the site which have not been included or addressed in the arboricultural report. Council's Consultant Landscape Architects has reviewed the proposal and have no objection to the removal of the trees detailed in the arboricultural report however they recommend that the report be revised to include the mature trees located on 58 Falconer Street.

Notwithstanding this, as noted in Section 7 above, in relation to the Planning Principles set out in *Wombarra Pty Ltd v Wollongong City Council* (2003) NSWLEC 268 "*where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved*" and the "*it is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*" The proposal involves the removal of most of the site's vegetation and even with replanting, which may take years to establish, will render the development incompatible in terms of the existing landscape patterns in the area.

**(b) Relevant SEPPs**State Environmental Planning Policy (Affordable Rental Housing) 2009

The aims of this Policy are as follows:

- "(a) to provide a consistent planning regime for the provision of affordable rental housing,*
- (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- (c) to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*

**ITEM 3 (continued)**

- (e) *to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
- (f) *to support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) *to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.”*

Under Clause 10 of Division 1 of Part 2 of the SEPP (which relates to the provision of In-fill affordable housing), the provisions of this Division apply to the proposed development as such a development (multi-dwelling housing) is permitted with consent under the RLEP 2010 and is in an accessible area.

In accordance with Clause 4(1) of the SEPP an accessible area means land that is within:

- “(a) 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or*
- (b) 400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or*
- (c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.”*

As the site is situated 750m from West Ryde Train station and less than 400m from bus stops on Victoria Road, Hermitage Road and Parkes Road, it is located within an area that is classified as accessible and, as such, the provisions of Division 1, Part 2 Infill affordable housing applies.

As the proposed FSR of the development complies with the maximum FSR set out in the RLEP 2010, the application does not need to avail of the additional FSR bonus which may be sought under Clause 13 of the SEPP.

Clause 14 of the SEPP sets out specific standards in relation to site area, landscaped area, deep soil zones, solar access, parking and dwelling size, which consent authorities cannot use to refuse consent provided these standards are met. In this regard, it is noted that the proposed development fails to comply with the minimum requirements with regard to deep soil zones and dwelling size.



**ITEM 3 (continued)**Deep soil zones

Clause 14(a)(d) states that a consent authority cannot refuse consent where the deep soil zones is not less than 15% of the site area, each area forming part of the deep soil zone has a minimum dimension of 3m; and if practicable, at least two thirds of the deep soil zone is located at the rear of the site area.

On the Site Analysis Plan (DA-12), the applicant states that the deep soil zone is 795m<sup>2</sup> (35.8% of the site area) but the Landscape Calculations Plan (DA-22) shows the total landscaped area within the site as only 788m<sup>2</sup>. Furthermore it is noted that whilst four areas are identified on the Ground Floor plan (DA-13) as deep soil zones, only 36.21m<sup>2</sup> of this area has a minimum 3m x 3m dimension (being only 1.6% of the site area).

Dwelling size

Clause 14(2)(b) states a consent authority must not refuse consent if the each dwelling has a GFA of at least 50m<sup>2</sup> for a one bedroom dwelling, 70m<sup>2</sup> for 2 bedrooms dwelling or 95m<sup>2</sup> in the case of a dwelling having three or more bedrooms. Whilst the majority of the units meet the minimum dwelling size, unit 6 does not comply with the minimum required GFA being 94.5m<sup>2</sup>, where 95m<sup>2</sup> is required. However it is noted that the shortfall is minimal and Clause 14(3) states that a Consent authority may consent to a development whether or not the development complies with the above standards. In this regard the dwelling size is not considered a significant issue.

Design Requirements - Senior Living Policy; Urban Design Guidelines

Clause 15(1) states that a consent authority must not consent to an infill affordable development under the SEPP unless it has taken into consideration the provisions of the *Senior Living Policy; Urban Design Guidelines* to the extent that those provisions are consistent with the SEPP.

As detailed in **Table 3** of the Compliance Tables, the proposed development fails to comply with the provisions of the Design Guidelines with regard to:

- Responding to the surrounding street layout and hierarchy, the predominant block and lot patterns and the existing built environment that contributes positively to the neighbourhood character.
- Site Planning and Design in terms of optimising internal amenity and minimising impacts on neighbours, location of the built form on the site relative to the street, provision of adequate deep soil zones and private open space and the retention of trees and planting.

**ITEM 3 (continued)**

- Impacts on streetscape in terms of the location and design of development to be sympathetic to existing streetscape patterns and setbacks, and avoiding unrelieved long straight driveways that are visually dominant.
- Internal Site Amenity in terms of maximising solar access to living areas and private open space of the proposed units, designing dwelling entries so that they are clear and identifiable from the street or driveways, locating habitable rooms away from driveways and parking areas, ensuring adequate consideration is given to safety in terms of overlooking of common open space areas, provision of private open space and the identification of garbage collection areas.

Character of the local area

Clause 16A states that a consent authority must not consent to development under Division 1 (Infill affordable housing) unless it has taken into consideration whether the design of the development is compatible with the character of the local area. As previously discussed in Section 7 of this report, it is considered that the proposal has not responded to the surrounding context, pattern of development or character of the area in terms of setback, rhythm of development and landscape setting.

For these reasons, it is recommended that the application be refused.

For a full assessment of the proposal relative to the provisions of the SEPPARH, refer to **Table 2** of the attached Compliance Tables.

State Environmental Planning Policy (Building Sustainability Index: BASIX)

The development is identified under the Environmental Planning and Assessment Regulation 2000 as a BASIX Affected Building. As such, a BASIX Certificate has been prepared (BASIX Cert 377272M\_03 dated 26 November 2012) which provides the development with a satisfactory target rating.

Note: There are a number of discrepancies in the Certificate in terms of Lot numbers identified, incorrect bedroom numbers and the gross floor area of the proposed development. Amended BASIX Certificate would be required to satisfactorily address these discrepancies should the application be supported.

State Environmental Planning Policy No 55 – Remediation of Land

The requirements of State Planning Policy No. 55 – Remediation of Land apply to the subject site. In accordance with Clause 7 of SEPP 55, Council must consider if the land is contaminated, if it is contaminated, is it suitable for the proposed use and if it is not suitable, can it be remediated to a standard such that it will be made suitable for the proposed use.

**ITEM 3 (continued)**

The applicant states that site is currently and has historically been in residential use and there is minimal evidence of contamination of the site.

As stated above, there is no evidence to indicate that the site may be contaminated and there is no requirement for preliminary contamination testing at this stage of the assessment.

Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 applies to the subject site and has been considered in this assessment.

The site is located within the designated hydrological catchment of Sydney Harbour and therefore is subject to the provisions of the above planning instrument. However, the site is not located on the foreshore or adjacent to the waterway and therefore, with the exception of the objective of improved water quality, the objectives of the planning instrument are not applicable to the proposed development. The proposed development raises no other issues and otherwise satisfies the aims and objectives of the planning instrument.

**(c) Any draft LEPs****Draft Ryde Local Environmental Plan 2011**

A Section 65 Certificate enabling the formal exhibition of Draft Local Environmental Plan 2011 was issued by the Department of Planning and Infrastructure on 23 April 2012. The Draft Plan was placed on public exhibition between 30 May 2012 and 13 July 2012 and adopted by Council at its meeting held on 12 March 2013.

Under this Draft LEP, the zoning of the site remains as R2 Low Density Residential and the proposed development is permissible with consent. The objectives of the zone are:

- *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 for a variety of housing types.*

The proposal is considered to be generally in compliance with these objectives. The provisions of the Draft LEP generally accord with those in the current RLEP however the following provisions have relevance to the proposal:

**ITEM 3 (continued)****4.1C Minimum Lot sizes for dual occupancy and multi-dwelling housing**

This clause states that development consent may be granted for multi dwelling housing on a lot if the area of the lot is equal to or greater 900m<sup>2</sup> and the road frontage of the lot is equal to or greater than 20 metres. The proposal would comply with this control.

**4.3 Height of buildings**

As outlined earlier in the assessment of the objections to the development, the Height of Buildings clause has been amended in the Draft LEP such that Clause 4.3(2C) specifies that *“despite subclause (2) (which relates to the Height of Buildings Map), the maximum height of multi dwelling housing in Zone R2 Low Density Residential is for dwellings in the building that do not have a frontage to the street 5 metres.”*

Therefore whilst the control in the RLEP restricting the height at street frontage to 8.5m would be removed (and 9.5m would be permissible here), the height of units 2-10 would be restricted to 5m. As such the development as proposed would not comply with the height restrictions of the Draft LEP.

**4.4A Residential zone – floor space ratio**

This Clause excludes multi dwelling housing developments in Zone R2 Low Density Residential from having to comply with the maximum FSR as shown on the Floor Space Ratio Map.

This would not affect the development as proposed.

It is therefore considered that though the proposed development would be generally consistent with the objectives of the Draft LEP, it would result in development that would be at variance with Council’s desired building height for multi-dwelling developments in low density residential areas. Whilst this issue could be resolved through the redesign of the units or by condition, the existing deficiencies in the design in terms of the inadequate floor to ceiling height of some of the units, would be likely to reduce the units to one bedroom units, thereby changing the proposed unit mix.

**(d) Any DCP****Ryde DCP 2010**

The proposal has been assessed against the relevant objectives and controls of the RDCP 2010 in **Table 4** of the attached compliance checklist.

**ITEM 3 (continued)****Part 3.5 - Multi-dwelling housing for Low Density Residential zone**

The objectives of Part 3.5 Multi-dwelling housing for Low Density Residential zone is to:

- *Multi dwelling housing (attached) developments complement existing development and streetscape*
- *Dispersal of multi dwelling housing (attached) developments occurs within neighbourhoods throughout City of Ryde.*
- *Multi dwelling housing (attached) developments are designed to the highest possible aesthetic standard*
- *Multi dwelling housing (attached) developments meet the needs of all households, including older people*
- *A mix of housing types are provided throughout the City of Ryde;*
- *Multi dwelling housing (attached) designs promote security and safety of residents*
- *Land used for multi dwelling housing (attached) development has adequate provision of daylight, privacy, landscaping and car parking*
- *The amenity of occupants of adjoining land is not adversely affected by an multi dwelling housing (attached) development;*
- *The scale of any Multi dwelling housing (attached) development is related to the character of the area.*
- *Heritage significant buildings and those identified as contributing to the character of Ryde are retained.*
- *Multi dwelling housing (attached) developments occur in suitable areas only, that is areas where the development meets the needs of all residents, does not have adverse environmental impact or an adverse impact on the character of an area.*

The proposal does not satisfy a number of the objectives for multi-dwelling housing in the low Density Residential Zone. In this regard it fails to:

- Complement existing development and streetscape by virtue of its bulk, scale and density.
- Disperse multi dwelling housing developments within the neighbourhood as it is located in close proximity to two existing medium density multi-dwelling developments.
- Achieve the highest possible aesthetic standard.
- Promote security and safety of residents.
- Protect the amenity of occupants of adjoining lands and be of a scale that relates to the character of the area.



**ITEM 3 (continued)**

Issues of concern or non-compliance with the controls of the DCP relate to:

- Inadequate solar access to proposed living areas and private amenity areas. The ground floor bedroom window of Unit 10 is less than 1.5m from a 1.8m high boundary fence.
- Insufficient floor to ceiling heights at attic level.
- Inadequate setback provisions.
- Inadequacy provision of private open space.
- Inadequate landscaping.
- Inability of the development to comply with Australian Standard AS 2890.1-2004 with regard to driveway width and gradients, manoeuvrability in and out of garages and sightline requirements for pedestrians.
- Noise intrusion and light pollution to both the future residents of the development (if permitted) and the occupants of existing adjoining properties.
- Accessibility.
- Lack of surveillance of common areas and the pedestrian walkway and
- Failure to comply with Part 8.2 - Storm water Management of the DCP or address the concerns raised by Council's Consultant Development Engineer in his report of 28 May 2012.

Refer to **Table 5** for a more thorough assessment of the relevant DCP controls. Whilst some of these could be resolved through conditions of consent however as it is recommended for refusal no such conditions are identified at this stage.

**10. Likely impacts of the Development**

The likely impacts of the development have already been addressed in this report.

**11. Suitability of the site for the development**

The site is not classified as a heritage item or subject to any natural constraints such as flooding and subsidence. In this regard, the site is considered to be suitable for the development in terms of impacts on both the existing natural and built environment.

However as outlined in this report, having regard to the proximity of the site to existing multi-dwelling developments in a low density residential area, the impact that additional medium density development would have on the character of the area and the residential amenity of adjoining properties, it is considered that the site is not suitable for a development of this scale or nature.

**ITEM 3 (continued)****12. The Public Interest**

The public interest is served by permitting the orderly and sustainable development in a manner that is sensitive to the surrounding environment and having regard to the reasonable amenity expectations of surrounding land users. In view of the foregoing analysis, it is considered that the development:

- has failed to satisfactorily address the relevant planning objectives under all the applicable legislations, State Environmental Planning Policies and Local Environmental Planning Controls
- would result in a substandard residential development that fails to meet the minimum standards of Council with regard to private amenity space provision, landscaping, solar access and setbacks
- Would set an undesirable precedent for poorly designed developments in which vehicular access and parking dominates the layout resulting in a pedestrian unfriendly environment with potential safety and security concerns and
- In respect of the above, does not result in a development that is sensitive to the surrounding environment or result in an appropriate level of amenity to surrounding land users.

It is therefore considered that the proposal is not in the public interest.

**13. Consultation – Internal and External**Internal Referrals

**Development Engineer: 9 April 2013:** Council's Consultant Development Engineer has reviewed the proposal and has made the following comments:

- 1) *The drainage details submitted do not address the issues raised in previous memo dated 28/5/12. The details on landscape and drainage plans submitted are not consistent;*
- 2) *The drainage plan as submitted do not comply with Council's DCP 2010 Part 8.2 for Storm water Management; and*
- 3) *The driveway width at the entrance, driveway gradients, manoeuvring in and out of garages and sight line requirements for pedestrians do not comply with Australian Standard AS 2890.1 -2004.*

As such, the proposal is not supported by Council's Consultant Development Engineer.

**ITEM 3 (continued)**

**Consultant Landscape Architect:** Council's Consultant Landscape Architect has advised that there are inconsistencies between the Landscape Plan, the Landscape planting plan and the architectural plans. They also found deficiencies in the arboricultural report submitted with the application which fails to include several mature trees on 58 Falconer Street. It was recommended that the landscape plan and the arboricultural report be revised to address the deficiencies outlined in their report.

Concerns were also raised about the inadequacies of the private amenity space provision, the unsuitability of proposed tree species/locations and the safety risks associated with the proposed walkway.

External Referrals

The proposal was not required to be referred to any external bodies.

**14. Critical Dates**

There are no critical dates or deadlines to be met.

**15. Financial Impact**

Adoption of the recommendations outlined in this report will have no financial impact.

**16. Conclusion**

Three submissions have been received, including a petition containing 29 signatures, objecting to the proposal. The issues raised in these letters involved concerns in respect of the impact of the development on the character of the local area, an overconcentration of multi-dwelling developments in a low residential density area, impacts on the residential amenity of adjoining properties, non-compliance with SEPPARH and the substandard development that would result from the failure to comply with the controls set out in the SEPPARH and the RLEP 2010. These issues are considered to be valid.

For this reason, the development application is recommended for refusal.

**ITEM 3 (continued)**

**ATTACHMENT 1**

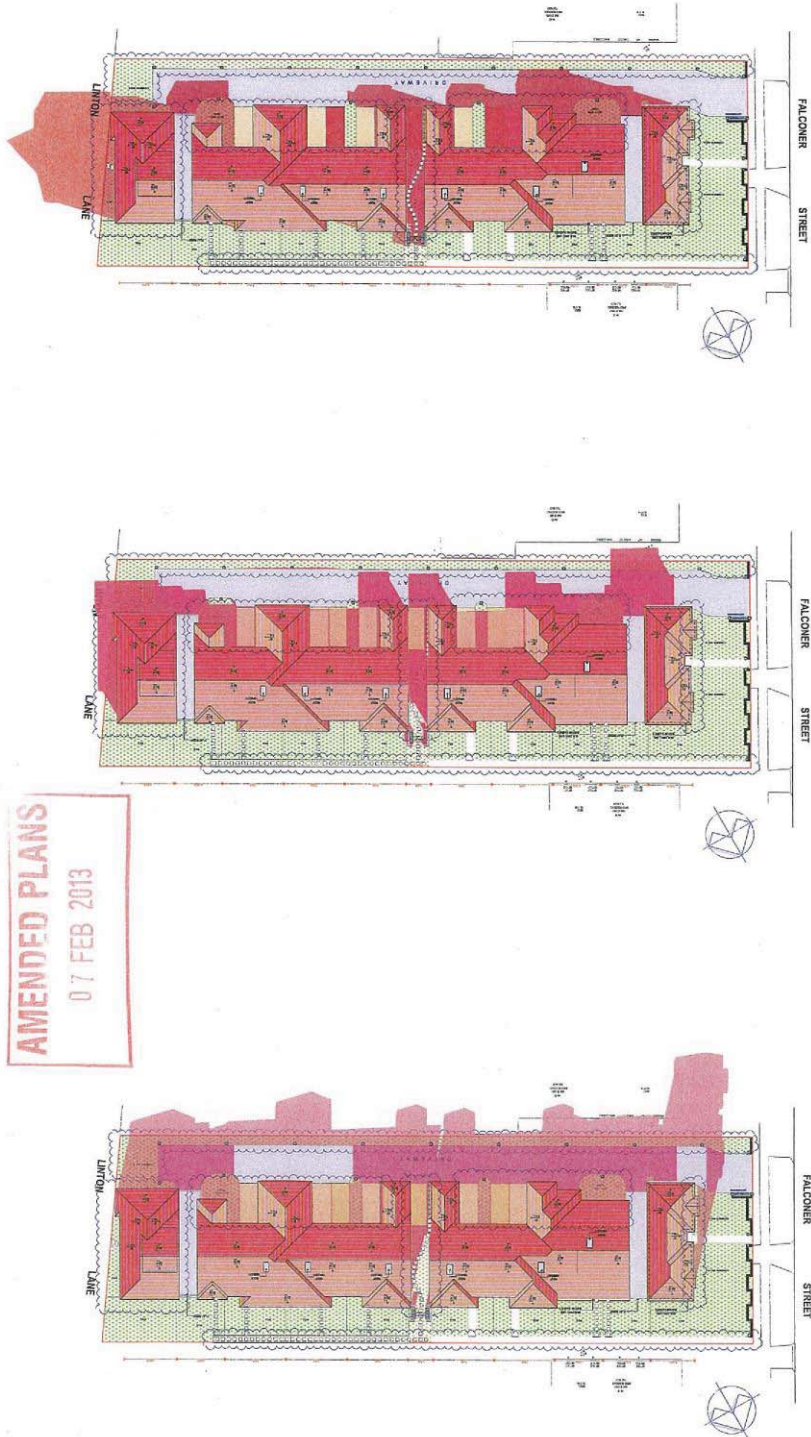
● Indicates submissions received  
Petition also received





**ITEM 3 (continued)**

**ATTACHMENT 2**



3pm JUNE 21 SHADOW  
SCALE 1:500 @ A1

12pm JUNE 21 SHADOW  
SCALE 1:500 @ A1

9am JUNE 21 SHADOW  
SCALE 1:500 @ A1

**AMENDED PLANS**  
07 FEB 2013

issue	amendment	date	SCHEDULE OF DRAWINGS	author	checked	scale	project no	drawing no	issue
A	Final	17.02.2011	01 - SITE & SITE ANALYSIS PLAN	J.B	J.J	A3 SHOWN @ A1	11-C44	DA-19	D
B	Development Application	14.08.2012	02 - GROUND COVER PLAN	J.B	J.J	A3 SHOWN @ A1	11-C44	DA-19	D
C	Development Application	14.08.2012	03 - SUBDIVISION PLANS	J.B	J.J	A3 SHOWN @ A1	11-C44	DA-19	D
D	General Revision	22.11.2012	04 - ROOF PLAN	J.B	J.J	A3 SHOWN @ A1	11-C44	DA-19	D
			05 - SECTIONS & ELEVATIONS						
			06 - ELEVATIONS						
			07 - SHADOW ANALYSIS						
			08 - SHADOW ANALYSIS						



- 4 20 WEST PARADE, EASTWOOD. LOT 2 DP 808844. Application pursuant to Section 96(1A) of the Environmental Planning and Assessment Act, 1979 to amend the trading hours for Landmark Hotel. LDA No. LDA2009/0700. Section 96 Application No. MOD2012/0203.**

**INTERVIEW**

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**Report prepared by:** Senior Town Planner

**Report approved by:** Manager Assessment; Group Manager - Environment & Planning

**Report dated:** 23 April 2013

**File Number:** grp/09/5/6/2 - BP13/617

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### 1. Report Summary

**Applicant: Malcon Pty Ltd.**

**Owner: Malcon Pty Ltd.**

**Date lodged: 14 December 2009.**

On 20 July 2010 Council granted development consent under LDA2009/0700 to construct a hotel. The premises were subsequently constructed, fitted out and commenced trading in September 2012.

A Section 96(1A) Application has been received seeking modifications to Development Consent No. 2009/0700 which was issued for construction of a hotel and associated facilities. The Hotel was approved with the following trading hours as per Condition 219:

Monday to Saturday - 10:00am to 12:00 midnight

Sundays - 10:00am to 10:00pm

The modification involves amendment of Condition 219 to allow extended trading hours as follows:

Monday to Saturday - 10:00am to 3:00am

Sundays - 10:00am to 12:00 midnight

The proposed modification is considered to be substantially the same development in terms of the relevant provisions of the *Environmental Planning and Assessment Act, 1979*.

The Application was advertised in the Northern District Times on 23 January 2013. In addition 1,474 notification letters were sent out to individual occupiers and owners of properties located in the vicinity of the site. In response, twenty one submissions (one support, three with no objections and 17 objecting to the proposal) were received.

The Application was also referred to the Eastwood Police for comments. The Eastwood Police have raised no objections to the proposed extension of trading hours subject to an amended Venue Management Plan and a trial period of 12 months.

**ITEM 4 (continued)**

In addition, Council sought an independent peer review of the Social Impact Assessment received with the application. The advice from the Independent Social Impact Consultant generally concurs with the comment from the Eastwood Police.

It is recommended that the proposed extension to trading hours be approved for a trial period of 12 months subject to conditions recommended by the Eastwood Police.

**Reason for Referral to Development Committee:** Requested by Councillor Perram.

Public Submissions: Total of twenty one submissions comprising the following:

- One submission was received in favour of the development.
- Three submissions raised no objection to the development.
- Seventeen submissions received, objecting to the proposed extension of opening hours.

Clause 4.6 RLEP 2010 objection required? No

Value of works? N/A (The Application only seeks extension of trading hours).

Copies of the site plan and Venue Management Plan are **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors - subject to copyright provisions.

**RECOMMENDATION:**

(a) That the Section 96 application to modify Local Development Application No. MOD2012/0203 at 20 West Parade, Eastwood being LOT 2 DP 808844 be approved and the Consent to be modified in the following manner:

1. That Condition No. 1 of the Consent be amended to read as follows:

1. Development is to be carried out in accordance with the following plans and support information submitted to Council except as amended by other conditions of consent:

Plan and Documents	Description	Issue	Date
DA1501	Site Analysis & Demolition Plan	3	26/11/2010
DA1511	Floor space details	4	26/11/2010
DA2101	Basement Level – Proposed	8	19/01/2011
DA2102	Ground Floor – Proposed	6	26/11/2010
DA2104	Roof Plan	4	26/11/2010
DA2105	Showing Internal Dimensions	1	26/11/2010
DA2202	Landscaping	1	26/11/2010
DA2601	Sections	2	24/1/2011

**ITEM 4 (continued)**

DA3101	Elevations	4	26/11/2010
DA3301	Sections	3	26/11/2010
DA5101	Schedule of Finishes – Page 1	3	26/11/2010
DA5102	Schedule of Finishes – Page 2	1	26/11/2010
-	Waste management Plan	-	
-	<b>Venue Management Plan</b>	-	<b>January 2013</b>
-	Security Management Plan	-	March 2010

2. That Condition Numbers 219 be modified to read as follows:

Existing Condition:

219. *The hours of operation of the proposal are restricted to 10:00am to 12:00 midnight Monday to Saturday and 10:00am to 10:00pm on Sundays.*

Recommended Condition:

219. The Hotel shall only operate within the hours specified under this condition:

- (a) The hours of operation of the proposal are restricted to 10:00am to 12:00 midnight Monday to Saturday and 10:00am to 10:00pm on Sundays.
- (b) Notwithstanding (a) above, the premises may operate until 3:00am on Monday to Saturday and until midnight on Sundays for a trial period of twelve months commencing from the date of the grant of an extended trading authorisation by the NSW Independent Liquor and Gaming Authority. The applicant shall as soon as reasonably possible, furnish Council with documents to confirm commencement of the trial period.
- (c) At the expiration of the trial period the opening hours shall revert to the hours approved under (a) above.
- (d) The operator may seek a review of the opening hours through a separate Section 96 Application being made to Council prior to the expiry of the trial period. A decision to make the hours permanent may include (but not limited to) factors such as:
  - Any justified complaints received and investigated by the Police and or the Council;
  - Comments and advice received from the Eastwood Police as a result of the new Section 96 Application being referred to them;

**ITEM 4 (continued)**

- The performance of the operator during the trial period with respect to compliance with the Venue Management Plan;
- Verified data submitted by the applicant in relation to the use of the courtesy bus service by the patrons during the extended opening hours. In relation to this matter an independent survey company (Quality System Certified – ISO9000/ISO9001) shall undertake progressive surveys (at the operator's costs) of the number of patrons utilizing the free bus service during the extended hours of operation.

2. That the following additional condition be imposed:

223. That the operation of the hotel must be carried out in accordance with the approved Venue Management Plan updated in January 2013.

(b) That the persons who made submissions be advised of Council's decision.

**ATTACHMENTS**

- 1 Map
- 2 Site Plan - CIRCULATED UNDER SEPARATE COVER
- 3 Venue Management Plan - CIRCULATED UNDER SEPARATE COVER
- 4 Report from Elton Consulting - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Sanju Reddy**  
**Senior Town Planner**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager - Environment & Planning**

**ITEM 4 (continued)****2. Site** (*Refer to attached map.*)

<b>Address</b>	:	20 West Pde Eastwood
<b>Site Area</b>	:	Area: 574.7m <sup>2</sup> Frontage: 58m metres (irregular frontage) Depth: Approximately 11m – 15m metres (average)
<b>Topography and Vegetation</b>	:	The site has a slight fall to West Parade. There is no vegetation on the site.
<b>Existing Buildings</b>	:	The site is currently operating as the Landmark Hotel.
<b>Planning Controls</b>		
<b>Zoning</b>	:	B4 - Mixed Use
<b>Other</b>	:	Ryde Development Control Plan 2010 Ryde Local Environmental Plan 2010 Environmental Planning & Assessment Act, 1979.

**3. Councillor Representations:**

Name of Councillor: Councillor Perram.

Nature of the representation: Called up the application to the Planning & Environment Committee.

Date: 7 February 2013.

Form of the representation (e.g. via email, meeting, phone call): Email sent to Councillor Helpdesk.

On behalf of applicant or objectors? Unknown.

Any other persons (e.g. consultants) involved in or part of the representation: No.

**4. Political Donations or Gifts**

Any political donations or gifts disclosed?

None disclosed.

**5. Proposal**

Modification of Development Consent pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act, 1979 for construction of a hotel and associated facilities.



**ITEM 4 (continued)**

The modification involves amendment of Condition 219 to extend the trading hours from approved hours to the proposed as shown below:

Approved hours:

Monday to Saturday - 10:00am to 12:00 midnight

Sundays - 10:00am to 10:00pm

Proposed hours:

Monday to Saturday - 10:00am to 3:00am

Sundays - 10:00am to 12:00 midnight

**6. Background**

- LDA2009/0700 was approved on 20 July 2010 for the hotel and associated facilities. The consent was subject to a number of conditions including the following that will be affected by the current S96 Application:

219. *The hours of operation of the proposal are restricted to 10:00am to 12:00 midnight Monday to Saturday and 10:00am to 10:00pm on Sundays.*

- The Section 96 Application MOD2012/0203 was lodged on 17 December 2012.
- The Section 96 Application was advertised on 23 January 2013 in the Northern District Times. As a result 21 submissions were received. Seventeen which objected to the proposal, three which raised no objections and one in support.
- The application was referred to the Eastwood Police for comments. The Police recommended a trial period of 12 months.
- On 19 February 2013 the correspondence from the Police and all the public submissions were forwarded to the applicant.
- On 21 February 2013, the applicant provided a response to the issues raised in the submissions. In addition, the applicant provided a response through his lawyer advising that the 12 month trial period would be acceptable to the applicant.
- Having regard for the number of submissions received, on 18 March 2013, Council engaged Elton Consulting to peer review the Social / Community Impact Statement submitted by the applicant.

**7. Submissions:**

The proposal was advertised and notified in accordance with Development Control Plan 2010 - Part 2.1, Notification of Development Applications. The application was advertised on 23 January 2013. Notification of the proposal was from 16 January 2013 until 6 February 2013.

**ITEM 4 (continued)**

Twenty one submissions were received comprising one letter of support, three letters raising no objection and seventeen letters objecting to the proposed extension of trading hours. The issues raised in the submissions were:

- a) **From Eastwood Hotel:** *It should be noted that the requirement for a courtesy bus service, as per Condition 4 of the Development Consent, has not been met. Given that the Landmark Hotel has already breached the terms of the Consent as no courtesy bus has been provided, it would be premature to approve extended hours of operation.*

**Assessment Officer's Comment**

It is acknowledged that on 8 October 2012, a S96 Application (MOD2012/0146) was lodged with Council seeking variation to Condition No. 4, that is, to defer implementation of the courtesy bus service by 12 months. The reason provided for seeking this variation was to enable the applicant to ascertain the demand/ need for such a service on the site. The provision of bus service was deferred pending an outcome on this s96 Application.

Subsequently, an Interim Occupancy Certificate was issued by the Principal Certifying Authority on 27 November 2012. This deemed the building suitable for use and occupation in accordance with Part 4A of the *Environmental Planning and Assessment Act 1979*.

On 17 December 2012 the current Section 96 Application was made (the application subject of this report) seeking extension of trading hours. Upon making the application for extension of trading hours, the application (MOD2012/0146 - relating to the provision of mini bus service) was withdrawn by the applicant and an eight seat courtesy bus service was immediately provided on site in liaison with Council's Traffic Engineer.

- b) *Since the Landmark Hotel started operating, the Eastwood Hotel has noticed an increase in their need to manage patrons, particularly at the one hour period post midnight. In this regard, Redcape has had to employ additional staff and security guards to deal with increased patrons related issues around the entrances of the Eastwood Hotel caused by non-patrons of the Eastwood Hotel.*

**ITEM 4 (continued)****Assessment Officer's Comment**

The application was referred to the Eastwood Police for review and comments. Comments received from the Police did not indicate any crime incidents or any objection to the proposed extension of opening hours subject to a 12 month trial period. The 12 month trial period is in order to enable a thorough assessment of compliance matters and any potential negative impacts to the local community before any permanent approval could be recommended.

The issue raised in the submission was referred to the applicant for consideration. The applicant has provided the following written response to the above issue:

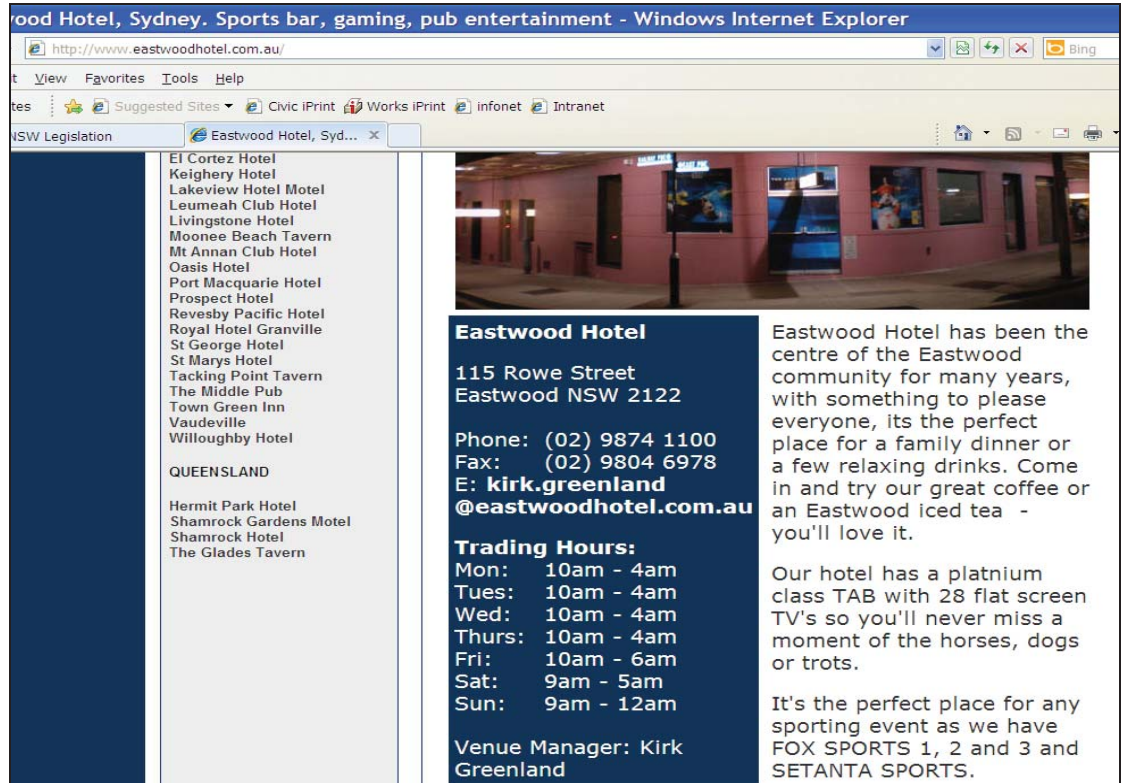
*The issue has been raised by a competitor. The Eastwood Hotel (objector) is located on the opposite side of the Eastwood railway line to that the Landmark Hotel (applicant). Importantly, the Eastwood Hotel is located in close proximity to Eastwood Police Station. There has not been history of any adverse incidents in and around the Eastwood Hotel as a result of the operations of the Landmark, and if any such incidents were occurring, then the Police would be aware of the same.*

*If this application were to be granted, then this would mean that existing patrons can continue to patronise the Landmark Hotel after midnight without having to go elsewhere to do so including to other premises in the suburb such as the Eastwood Hotel.*

*The security company which the Landmark uses is the same as the Eastwood hotel. The security company has never raised such concerns. The Police have undertaken numerous business inspections and have not raised concerns. Based on the good trading record (in the last couple of months) by the Landmark Hotel, together with the additional restrictive requirements/measures (such as the Venue Management Plan and additional security guards) to apply during the extended hours, the Eastwood Police have not objected to the proposal subject to a trial period.*

**ITEM 4 (continued)**

It is noted that the issue has been raised by the Eastwood Hotel which operates a licensed hotel located on the opposite side of the Eastwood railway station with extended opening hours beyond that proposed by the Landmark Hotel. The opening hours for the Eastwood Hotel are advertised on their website as being the following:



The screenshot shows a web browser window displaying the Eastwood Hotel website. The page is titled "Eastwood Hotel, Sydney. Sports bar, gaming, pub entertainment". The main content area is divided into three columns. The left column lists various hotels in Queensland, including El Cortez Hotel, Keighery Hotel, Lakeview Hotel Motel, Leumeah Club Hotel, Livingstone Hotel, Moonee Beach Tavern, Mt Annan Club Hotel, Oasis Hotel, Port Macquarie Hotel, Prospect Hotel, Revesby Pacific Hotel, Royal Hotel Granville, St George Hotel, St Marys Hotel, Tacking Point Tavern, The Middle Pub, Town Green Inn, Vaudeville, and Willoughby Hotel. The middle column provides contact information for the Eastwood Hotel: 115 Rowe Street, Eastwood NSW 2122, Phone: (02) 9874 1100, Fax: (02) 9804 6978, and E: kirk.greenland@eastwoodhotel.com.au. The right column lists trading hours: Mon: 10am - 4am, Tues: 10am - 4am, Wed: 10am - 4am, Thurs: 10am - 4am, Fri: 10am - 6am, Sat: 9am - 5am, Sun: 9am - 12am. Below the trading hours, it identifies the Venue Manager as Kirk Greenland. The rightmost column contains a photograph of the hotel's exterior at night and a text block describing the hotel as the center of the Eastwood community, offering a family dinner or a few relaxing drinks, and mentioning a platinum class TAB with 28 flat screen TV's.

Therefore, to address the issue in the submission, more consistent opening hours for the two hotels would somewhat alleviate the problem of the patrons from the Landmark Hotel at No 20 West Parade going to the Eastwood Hotel located at 115 Rowe Street.

- c) *The extended opening hours will result in an increase in violence, crime, anti-social behaviour and health risks. It will also increase the risk of assaults and property damage and drink driving. The socio-economic impact has been assessed by this proposal to extend the trading hours? Council should closely consider the potential impacts of this development before making a decision.*

**ITEM 4 (continued)****Assessment Officer's Comment**

A social/community impact statement has been submitted by the applicant. A major community and stakeholder consultation was conducted by the applicant as part of the community impact assessment. This document has also been submitted to the Independent Liquor and Gaming Authority.

In relation to the possible increase in violence and crime risk, Council sought comments from the Eastwood Police, and an independent peer review of the Social Impact Statement was also conducted by an Independent Social Impact Assessment Consultant. The applicant's response was also sought with respect to the matter raised in the submission. These matters are discussed below.

**Advice from Independent Social Impact Consultant:**

In addition to the above, Council sought an independent review of the Social Impact Statement submitted to Council as part of the S96 Application. The review conducted by an Independent Social Impact Consultant (from Elton Consulting) in general indicates the following with respect to the crime rates:

- *It is recognized that within Ryde LGA there is currently no evidence of either relatively high crime rates or a high density of liquor outlets. Nevertheless, the expectation, based on the evidence of research, would be that an extension to trading hours would result in an increase in adverse social impacts. However the applicant has incorporated a wide range of pro-active measures to minimise adverse social impacts into the amended Venue Management Plan (such as drink restrictions, additional security, limits to the number of patrons, availability and emphasis on food, restrictions on DJ and live entertainment and provision for courtesy bus service for the patrons. This will go a long way to minimizing the potential for such activities and impacts to adversely affect the local or broader community.*
- *On balance, the extent to which such mitigation measures can prevent the adverse social impacts which have been shown to result from extended trading hours will depend on the continued strict application by the hotel's management of the VMP and enforcement measures by the LAC (Local Area Command). It may be that the particular characteristics of the Eastwood area and its local crime rates will continue irrespective of the extension of trading hours as proposed.*
- *It is agreed that the updated VMP conditions and a trial period are a good compromise that will enable extended trading to occur while also allowing the Eastwood Police LAC to closely monitor the updated VMP and any changes to the rates of local crime and anti-social behaviour over time.*



**ITEM 4 (continued)**

A copy of the Elton Consulting Report is **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors.

**The applicant provided the following feedback in relation to this issue:**

*Since the Landmark Hotel commenced trading, there have been no assaults or violent incidents at the Hotel or in the vicinity of the Hotel involving patrons, nor is the management aware of any incidents of anti-social behaviour or damage to property resulting directly from the Landmark development.*

*As such, Council can be satisfied that the operators have a proven track record of operating the Hotel in a responsible manner without resulting in any increase in violence, crime, anti-social behaviour or property damage, and that having regard to the restrictions to apply, this will continue to be the case during any extended hours.*

*It is proposed that any application to extend the hours initially be granted for a trial period so that the applicant can demonstrate that the Hotel can be operated during the extended hours in a similar manner to that which is presently the case. Further, it is proposed that a number of additional restrictive conditions be imposed to further minimise the likelihood of any adverse impacts during the extended hours. Those restrictive conditions/measures include: the requirement for the premises to operate in accordance with an updated comprehensive Venue Management Plan; that no entertainment with loud music be provided at the premises (whether before or after midnight); that the maximum number of patrons in the Hotel after midnight be restricted to only 150; that various drink restrictions apply after midnight (ie no shots, slammers or bombs, no drinks that contain more than 30 mil of spirits, limit one drink per person, and no alcoholic drink is to be sold which is mixed with an energy drink); that the sale of liquor is to cease by 2.30 am; and that two security guards to be provided after midnight and until the last patron has left the hotel and the immediate vicinity of the hotel, whichever is the later.*

**Advice from the Eastwood Police:**

Council has consulted the Eastwood Police in relation to this matter. The Police have confirmed that following discussions with the applicant, the Venue Management Plan (referred above) is in place and has been updated to incorporate additional procedures that would apply on the nights when the hotel trades after midnight, with the aim of minimising the potential for adverse social impacts. The Police do not object to the proposed extended trading hours subject to two conditions, that is:

**ITEM 4 (continued)**

- If approved, the approval be granted for a 12 month trial period to allow the Police to undertake a thorough assessment of any negative impacts on the local community;
- Such approval is to be subject to full compliance with the revised Venue Management Plan (which has been revised in consultation with the Police as stated earlier).

In light of the above comments, it is recommended that the application be approved for an initial trial period of 12 months. A new condition No. 223 has been recommended (refer to recommendation section of this report) requiring the above.

- d) *Research has shown that there are significant decline in assaults after midnight following restrictions in alcohol availability, that is, reductions in hotel trading hours.*

Assessment Officer's Comment

It is acknowledged that the Australian and international research on the relationship between extended trading hours, the density of alcohol outlets, and their adverse impact on alcohol-related social harms, is strong.

The review provided by Council's Independent Social Impact Consultant also acknowledged *that within Ryde LGA there is currently no evidence of either relatively high crime rates or a high density of liquor outlets. Eastwood is not considered a crime hotspot. Council's Independent Social Impact Consultant has advised that the Eastwood Police LAC has confirmed that the area's low crime rates and lack of evidence of an increase in criminal activity or anti-social behaviour attributable to the operation of the hotel, means that there is no basis on which the Police can object to the proposed opening hours.*

Council has consulted the Eastwood Police in relation to this matter as mentioned earlier. The Police have not objected to the proposed extended trading hours subject to a 12 month trial period to allow the Police to undertake a thorough assessment of any negative impacts on the local community and that any such approval be subject to full compliance with the revised Venue Management Plan (See Condition 223).

The Council's Independent Social Impact Consultant has advised that the pro-active measures included in the amended VMP (such as drink restrictions, additional security, limits to the number of patrons, availability of food and restrictions on provision of entertainment) will go a long way to minimising the potential for such activities and impacts to adversely affect the local or broader community.

**ITEM 4 (continued)**

- e) *With increased crime rate resulting from the proposed development, the workload for the police will be stretched.*

Assessment Officer's Comment

The application was referred to the Eastwood Police for comments. The Police have not raised any such concern in relation to Police resource's being stretched.

- f) *The changes in opening hours will affect the price of the properties in the locality.*

Assessment Officer's Comment

The applicant has a right, under the Act, to maximize the economic use and development of land. Any possible decreases in surrounding property values do not constitute a reasonable planning ground for refusal of the Application.

- g) *There is insufficient parking in the area to allow for extended trading hours.*

Assessment Officer's Comment

During the extended trading hours the demand for parking will not be at its peak. The Hotel is situated next to both Eastwood Railway Station and the Eastwood Bus Interchange. In addition, an on site courtesy bus service is now operational. The Management also provides a service of contacting taxi companies to collect patrons from the Hotel if requested by the patrons. As such, more than ample transport will be available for the trading hours of the Hotel including during the extended hours. Further, it is unlikely that the hotel will be at its full capacity during extended opening hours.

- h) *Eastwood is a residential suburb, having a hotel in the midst with the extended trading hours would affect the quiet and peaceful neighbourhood. People leaving the hotel at late hours would disturb the peace of the locality. The proposal is not in keeping with the interest of the Eastwood community.*

**ITEM 4 (continued)**Assessment Officer's Comment

There is no residential development within an immediate vicinity of the site as it is located within the Eastwood Town Centre. In relation to the people leaving the site, the courtesy bus service is provided from the site for patrons living within 2km of the hotel. For others, the train station and bus station is located adjacent to the hotel.

In terms of public interest, adequate measures have been put in place to ensure any potential adverse impact is minimised. The Landmark Hotel provides a small scale licensed venue for dining and recreation. The proposed hours are not inconsistent with other similar facility within the locality. It is also noted that letters of support has been received from the Eastwood Chamber of Commerce and letters indicating no objection to the proposed extension of opening hours have been received from Australian Asian Association of Bennelong, Eastwood Chinese Senior Citizens Club and Feng Hua Chinese School.

The Eastwood Police has not raised any issues in relation to the potential disturbances to the peace of the locality based on the current operations. The Police have advised that if this application were to be approved, then it should be subject to compliance with the revised Venue Management Plan and a 12 month trial period in order for the Police to make a thorough assessment of compliance matters and any potential negative impacts to the local community. Therefore, this report recommends that if Council were mindful to approve this S96 Application, then it should be in accordance with the recommendation of the Eastwood Police.

- i) *The hotel is located adjacent to bus stop and train station. Train and bus passengers do not wish to be subjected to persons exiting the hotel and boarding the public transport under the influence of liquor.*

Assessment Officer's Comment

The applicant has advised that the Management has not received any complaints from any persons relating to the operations of the Hotel or the behaviour of patrons after leaving the premises including those catching public transport at the nearby bus interchange or Eastwood Railway Station. Having regard to the same and the additional measures to apply after midnight, the status quo in this regard is not likely to change.

**ITEM 4 (continued)**

It is noted that the nature of the proposed use does not include any function rooms or takeaway sales. The hotel places an emphasis on food and dining. Significant floor area has been allocated for this purpose. A Venue Management Plan is in place as required by the original condition of consent, which has further been revised in liaison with the Eastwood Police to be included with the Section 96 Application.

In relation to this issue, detailed measures to prevent any anti-social behaviour have been provided in the Venue Management Plan. It is considered that the proposed management measures included within the Venue Management Plan will minimise any anti-social behaviour and ensure that any incidents are isolated and dealt with promptly by the staff, security guards and the Eastwood Police. The Venue Management Plan has been revised by the applicant in liaison with the Eastwood Police and requires security personnel to be provided at the Hotel during any extended hours with one of the officers to patrol the surrounding area to assist in ensuring that the area remains safe. The Venue Management Plan also incorporates various measures such as the ones below to ensure minimal disturbances to the public:

- Protection of the amenity of the area;
- Display of telephone number outside the main entrance to the hotel to which any complaints about the hotel or its patrons may be made;
- Responsible serving of alcohol;
- After 10:00pm security staff will be assigned to ensure that patrons leaving the hotel do so in a responsible manner;
- Staff will assist patrons in arranging safe transport from the hotel and will arrange for a taxi to collect any patron when request is made;
- Recording of details of any incidents in a log book with details of the number of patrons on an hourly basis;
- At closing time, monitor patrons' behaviour in the vicinity of the hotel until all patrons have left the vicinity of the premises;
- Restrictions on type of drinks to be sold;

j) Letters of no objection received from the following organisations:

- Australian Asian Association of Bennelong
- Eastwood Chinese Senior Citizens Club
- Feng Hua Chinese School

Assessment Officer's Comment:

Noted.



**ITEM 4 (continued)**

- k) A letter of support was received from Eastwood Chamber of Commerce.

Assessment Officer's Comment:

Noted.

**8. Any Clause 4.6 Objection received?**

No, not required.

**9. Statutory Implications**

**Matters for consideration pursuant to Section 96(1A) of EPA Act:**

In accordance with Section 96(1A), Council may consider a modification of development consent provided:

- *It is satisfied that the proposed modification is of minimal environmental impact.*

Assessment Officer's Comment:

As discussed above, the proposed amendment will result in minimal environmental impact.

- *The proposed development is substantially the same as the approved.*

Assessment Officer's Comment:

It has been established that the development is substantially the same as that approved by Council on 20 July 2010 as no changes are proposed to the designated use and approved built form.

- *Any concurrence authority has been consulted and has not objected.*

Assessment Officer's Comment:

Concurrence from any other public authority is not required for the proposed changes.

- *The application for modification has been notified in accordance with the regulations; and*

Assessment Officer's Comment:

The application for modification was notified & advertised in accordance with Council Notification Policy for a period of 14 days.

**ITEM 4 (continued)**

- *Council has considered any submissions regarding the proposed modification*

Assessment Officer's Comment:

A number of submissions were received which have been considered in the assessment of this application.

In the above regard, it is considered that the application satisfies the requirements under the above provisions.

**Other matters for consideration pursuant to Section 79C of EP& A Act:**

Section 96(3) requires Council to consider relevant matters referred to in Section 79C(1) in assessing and application for modification of development consent. The matters of consideration have been discussed below.

**Local Environmental Plan 2010****Zoning**

The site is zoned Mixed Use - B4 and the development is permitted in the zone.

**Clause 4.3(2): Height of Buildings**

*The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The proposed modification of trading hours will not affect the approved height of the building on the site.

**Clause 4.4: Floor Space Ratio (FSR)**

*(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

No changes are proposed to the approved floor space on the site.

**Clause 5.10(2) Heritage Provisions.**

*Under this Clause, consent is required for development involving "heritage item" or if in a heritage conservation area.*

The existing building or the site has not been identified as a heritage item and is not in a heritage conservation area. No issues are raised in relation to this matter.

**ITEM 4 (continued)****Relevant State Environmental Planning Policy****State Environmental Planning Policy (Infrastructure) 2007 (SEPP)**

SEPP (Infrastructure) 2007 affects the site because of its proximity to the railway corridor. The original proposal was assessed against the requirement of this SEPP and was found satisfactory.

The proposed extension of trading hours does not affect any of the requirements under the SEPP. No issues are raised in relation to this matter.

**Any draft Local Environmental Plan**

A Section 65 Certificate enabling the formal exhibition of Draft Local Environmental Plan 2011 was issued by the Department of Planning and Infrastructure on 23 April 2012. The Draft Plan was publicly exhibited between 30 May 2012 and 13 July 2012. The draft LEP was finally adopted by Council on 12 March 2013 and is waiting gazettal by the Department of Planning and Infrastructure; as such LEP 2011 can be considered certain and imminent.

Under this Draft LEP, the zoning of the property remains unchanged. The proposed development would be permissible with consent.

**Any Development Control Plan****Ryde Development Control Plan 2010**

The above DCP applies to the site. However, there are no provisions under the DCP that specify or restrict trading hours for such a facility.

**10. Likely impacts of the Development****(a) Built Environment**

The proposed change to the trading hours will not result in any changes to the built environment and therefore no additional impact on the built form is anticipated as a result of the proposed changes to the opening hours.

**(b) Natural Environment**

The proposed modifications do not impact on the landscaping and other measures included in the original consent.

**ITEM 4 (continued)****(c) Social Impact**

It is accepted that the City of Ryde is shown to be an area with a low level of crime, however, this does not mean that there would be no incidents. It is not unreasonable to assume that some level of antisocial behaviour may arise occasionally from patrons departing the premises.

Adequate abatement measures proposed in consultation with the Eastwood Police who have not objected to the proposal, are in place to minimise any anti-social behaviour. The Social Impact Assessment Report notes the responsibility of the Police to enforce compliance with liquor, gaming and some aspects of environmental planning legislation. The Eastwood Local Area Command has provided comments to Council and will oversee the efficiency of the Venue Management Plan (VMP) which has been developed for this proposal to mitigate potentially adverse effects of the hotel and patron on the amenity of locality. The VMP has been implemented through a condition of consent, and has further been revised by the applicant in consultation with the Police in response to the proposed changes to trading hours.

Additional measures include the CCTV system proposed at the request of the Eastwood Local Area Command to supplement existing on-ground and camera surveillance. Further, the proposal will be subject to amended licensing requirements from the Office of Liquor, Gaming and Racing (OLGR). The Police have also recommended specific conditions for the license to be obtained by the applicant from OLGR.

It is accepted that these safety measures appear to be well planned to mitigate most incidents of crime and anti-social behaviour which could otherwise arise. While there will remain a risk of such activities, the proposed measures should work to deter or minimise anti-social behaviour.

Council had engaged an independent consultant to review the proposal, the Social Impact Assessment Report and some of the issues raised in the submissions. The following general recommendations were received from Council's Social Impact Consultant in relation to the potential social impact of the proposed development:

- It is considered that the SEE submitted to Council, and the Additional Information submission provided to the Independent Liquor and Gaming Authority, seem to overstate the community benefits of the current proposal and minimise consideration of the potential for adverse social impacts to develop over time.

**ITEM 4 (continued)**

- There is a strong body of evidence from national and international health literature which indicates that the proposal to extend trading hours to 3.00am Tuesdays to Sundays, and to midnight on Sunday evening, would be expected to result in an increase in adverse social and health impacts to individuals and the local community near liquor outlets. These would be expected to take the form of an increase in local crimes such as assault, malicious damage and driving offences, as well as some disturbance to local amenity through noise and other forms of anti-social behaviours.
- The applicant has incorporated a wide range of pro-active measures to minimise adverse social impacts into the amended VMP (such as drink restrictions, additional security, limits to the number of patrons, availability of food, restrictions on provision of entertainment and community bus service). These will go a long way to minimising the potential for such activities and impacts to adversely affect the local or broader community.
- On balance, the extent to which such mitigation measures can prevent the adverse social impacts which have been shown to result from extended trading hours will depend on the continued strict application by the hotel's management of the VMP and enforcement measures by the Eastwood Police Local Area Command. It may be that the particular characteristics of the Eastwood area and its local crime rates will continue irrespective of the extension of trading hours as proposed.
- It is agreed that the updated VMP conditions and a trial period are a good compromise that will enable extended trading to occur while also allowing the Eastwood Police LAC to closely monitor the updated VMP and any changes to the rates of local crime and anti-social behaviour over time.
- In planning for a review of the trial, Council should however consider in advance the criteria, or conditions, that would lead to the trial being considered a success, and under which a final approval or refusal would be issued. This may relate to factors such as:
  - The perceived success of the VMP to minimise adverse social impacts;
  - No discernible increase in local crime attributable to the premise;
  - No increase in drink driving activity attributable to this hotel;
  - No complaints by residents or businesses within a specified distance relating to actions of patrons.
- Subject to agreement in advance of criteria by which the success of the trial period can be measured, **it is recommended that** the extension to trading hours for the trial period be approved, as proposed.



**ITEM 4 (continued)****(c) Noise Impact**

The hotel does not propose any function or entertainment hall, thus, the potential for excessive noise is eliminated. Given the location of the site in the town centre and the peak demand for the hotel being at evening/ night, it is unlikely that the level of noise from patrons and traffic will cause any significant impact on the local business.

The original consent was issued subject to various conditions to ensure compliance with the noise criteria at all residential locations within the vicinity of the site.

It is unlikely that the level of noise emanating during the extended trading hours would be more than the noise before the extended opening hours.

This matter of proposed extended trading hours has been reviewed by Council's Environmental Health Officer and no objections have been raised.

**11. Suitability of the site for the development**

An assessment of site suitability was carried out prior to the issue of the Development Consent. The site is still considered suitable for the proposed development in terms of the impact on both the existing natural and built environments.

**12. The Public Interest**

Having regard to the assessment contained in this report including the comments received from the Eastwood Police, it is considered that approval of the development would be in the public interest subject to a 12 month trial period.

**13. Consultation – Internal and External**Internal Referrals

**Environmental Health Officer, 28 March 2013:** Raised no objection to the proposed extension of trading hours.

**ITEM 4 (continued)**External Referrals

**Eastwood Police, 5 February 2013:** The following comment was received from the Eastwood Police:

*On 18 January 2013 Eastwood Police received a Section 96 (1A) Application, Application Number. MOD2012/0203 to extend trading hours at the Landmark Hotel, 20 West Parade Eastwood. I had previously met with the applicant's representative, Mr Edward Malouf to discuss the proposed application. During this meeting Police highlighted concerns with the application and the possible implications of an increase in alcohol related crime and anti-social behaviour in and around the Eastwood CBD should this application be approved.*

*The applicant proposed a number of conditions in which he was prepared to agree in order to minimise the effect of the extended trading hours on the local community and NSW Police. In response Police proposed a number of further conditions which the applicant was willing to accept. The applicant prepared an updated Venue Management Plan and provided this in draft format to Police. The update to the Venue Management Plan included increased numbers of security guards and alcohol limitations during the extended trade period. Police have now perused this Venue Management Plan and request that, should this application be successful, the following or similar condition be placed on the Consent in order to ensure compliance with the Venue Management Plan.*

**"Operation of any business must be carried out in accordance with the Venue Management Plan updated January 2013."**

*The applicant has now provided a signed final copy of the Venue Management Plan dated January 2013. A copy of the updated Management Plan has been attached to this letter for your perusal.*

*It must be noted that the premises has only been trading for a short period, approximately five months which limits the opportunities for Police to assess the impact on crime and anti-social behaviour. As such police request that if council grant this application a 12 month trial period is considered in order for police to make a thorough assessment on any negative impacts to the local community.*

*Should the 12 month trial period and above mention condition be placed onto the Development Consent police do not have any objection to this application.*

**ITEM 4 (continued)****Social Impact Assessment Consultant (Elton Consulting):**

The Social/ Community Impact Assessment Report submitted by the applicant was reviewed by Council's Independent Social Impact Consultant and the conclusion section extracted from the report is included hereunder (the full report is on file and has been circulated to Councillors):

*In conclusion, it is considered that the SEE submitted to Council, and the additional Information submission provided to the ILGA, seem to overstate the community benefits of the current proposal and minimise consideration of the potential for adverse social impacts to develop over time. There is a strong body of evidence from national and international health literature which indicates that the proposal to extend trading hours to 3.00am Tuesdays to Sundays, and to midnight on Sunday evening, would be expected to result in an increase in adverse social and health impacts to individuals and the local community near liquor outlets. These would be expected to take the form of an increase in local crimes such as assault, malicious damage and driving offences, as well as some disturbance to local amenity through noise and other forms of anti-social behaviours.*

*In order to address the above matters, the applicant has incorporated a wide range of pro-active measures to minimise adverse social impacts into the amended VMP (such as drink restrictions, additional security, limits to the number of patrons, availability of food, restrictions on provision of entertainment and community bus service). These will go a long way to minimising the potential for such activities and impacts to adversely affect the local or broader community. On balance, the extent to which such mitigation measures can prevent the adverse social impacts which have been shown to result from extended trading hours will depend on the continued strict application by the hotel's management of the VMP and enforcement measures by the LAC. It may be that the particular characteristics of the Eastwood area and its local (low) crime rates will continue irrespective of the extension of trading hours as proposed.*

*It is agreed that the updated VMP conditions and a trial period are a good compromise that will enable extended trading to occur while also allowing the Eastwood Police LAC to closely monitor the updated VMP and any changes to the rates of local crime and anti-social behaviour over time.*

*In planning for a review of the trial, Council should however consider in advance the criteria, or conditions, that would lead to the trial being considered a success, and under which a final approval or refusal would be issued. This may relate to factors such as:*

- *The perceived success of the VMP to minimise adverse social impacts;*
- *No discernible increase in local crime attributable to the premise;*
- *No increase in drink driving activity attributable to this hotel;*

**ITEM 4 (continued)**

- *No complaints by residents or businesses within a specified distance relating to actions of patrons.*

*Subject to agreement in advance of criteria by which the success of the trial period can be measured, **it is recommended that** the extension to trading hours for the trial period be approved, as proposed.*

**14. Critical Dates**

There are no critical dates or deadlines to be met.

**15. Financial Impact**

Adoption of the option(s) outlined in this report will have no financial impact.

**16. Other Options**

Consideration of other options was not necessary for this Section 96 application.

**17. Conclusion:**

The proposed modification contained in the Section 96(1A) Application has been assessed in accordance with the statutory requirements and is considered satisfactory for approval. The modified development will substantially be the same development as approved under the consent.

The adoption and implementation of the VMP has been effective in minimising adverse effects of hotels and clubs. Should modifications to the VMP be necessary, these will also be undertaken in consultation with the Police and require the approval of Council. It is considered that the proposal has been developed in a way that will minimise the potential for social impacts. The many legislative arrangements governing the licensing and gaming approvals and operation of such premises, other policies overseen by the Police, the NSW Office of Liquor, Gaming and Racing and Council, and the proposed VMP (including the presence of security personnel and CCTV monitoring), should provide a high level of scrutiny of the proposed development and minimise the potential for anti-social behaviour and other effects discussed earlier in the report. The Eastwood Police who will be the main authority overseeing the compliance matters and social order have placed a great emphasis on the VMP. The VMP has been amended by the applicant to meet the requirements of the Police and the Police have not opposed the proposed extended trading hours outright, they have recommended a 12 month trial period.

**ITEM 4 (continued)**

The recommendations from the Eastwood Police have been incorporated in the recommended conditions (including a 12 month trial period) which will allow Council and the Eastwood Police to monitor and review any negative impacts as a result of the extended opening hours.



ITEM 4 (continued)

ATTACHMENT 1

● Indicates submissions received  
(21 received in total; other submissions received outside map area)

