

**Meeting Date:** Tuesday 17 September 2013  
**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde  
**Time:** 5.00pm

**NOTICE OF BUSINESS**

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**1 ELECTION OF CHAIRPERSON AND DEPUTY CHAIRPERSON**

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**Report prepared by:** Section Manager - Governance**File No.:** CLM/13/1/3/2 - BP13/1271

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**REPORT SUMMARY**

The Chairperson and Deputy Chairperson of the Planning and Environment Committee are elected for a one (1) year term and the following procedures are to be followed for the election process:

- (a) Determination of method of voting (ordinary ballot, preferential ballot or open voting).
- (b) Announcement of nominations.
- (c) Conduct of election.

**RECOMMENDATION:**

- (a) That the Committee determine the method of voting for the election of the Chair and Deputy Chair.
- (b) That the Acting General Manager or his delegate, as Returning Officer, undertake the election of the Chair and Deputy Chair for the ensuing twelve (12) months by announcing the nominations and then conducting the election.

**ATTACHMENTS**

There are no attachments for this report.

Report Prepared By:

**Amanda Janvrin**  
**Section Manager - Governance**

Report Approved By:

**Shane Sullivan**  
**Acting Group Manager - Corporate Services**

**2 CONFIRMATION OF MINUTES - Meeting held on 3 September 2013**

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**Report prepared by:** Section Manager - Governance**File No.:** CLM/13/1/3/2 - BP13/1118

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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 13/13, held on Tuesday 3 September 2013, be confirmed.

**ATTACHMENTS**

1 Minutes - Planning and Environment Committee - 3 September 2013

**ITEM 2 (continued)**

**ATTACHMENT 1**

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

**Meeting Date:** Tuesday 3 September 2013  
**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde  
**Time:** 5.00pm

**Councillors Present:** Councillors Simon (Chairperson), Maggio and Yedelian OAM.

**Apologies:** Councillor Chung.

**Leave of Absence:** Councillor Pendleton.

**Absent:** Councillor Salvestro-Martin.

**Staff Present:** Acting Group Manager – Environment and Planning, Service Unit Manager – Assessment, Acting Service Unit Manager – Environmental Health and Building, Team Leader – Assessment, Assessment Officer – Building Surveyor, Senior Development Engineer, Business Support Coordinator – Environment and Planning and Meeting Support Coordinator.

**DISCLOSURES OF INTEREST**

Councillor Simon disclosed a Less than Significant Non-Pecuniary Interest in Item 3 - 92 Constitution Road West, Meadowbank, for the reason that he is an acquaintance of the father of the applicant.

**1 CONFIRMATION OF MINUTES - Meeting held on 6 August 2013**

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

That the Minutes of the Planning and Environment Committee 12/13, held on Tuesday 6 August 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.

**ITEM 2 (continued)**

**ATTACHMENT 1**

**2 32 KEPPEL ROAD, RYDE - LOT 225 DP 12999. Development Application for the construction of a double garage within the front setback of the dwelling and an awning to the side of the dwelling. LDA2013/0131.**

Note: Geoff Starkey (objector) and Mark Fiore (owner) addressed the Committee in relation to this Item.

**RECOMMENDATION:** (Moved by Councillors Yedelian OAM and Simon)

- (a) That LDA2013/0131 at 32 Keppel Road, Ryde being LOT 225 DP 12999 be deferred for the Acting Group Manager – Environment and Planning to undertake a mediation with the applicant and objectors to look at solutions to provide onsite car parking in closer compliance with Council policy and addressing the issues of vehicular and pedestrian safety.
- (b) 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 **24 SEPTEMBER 2013** as substantive changes were made to the published recommendation.

**3 92 CONSTITUTION ROAD WEST, MEADOWBANK. LOT 2 DP 12059. Local Development Application to demolish laundry and construct new outbuilding/garage at the rear of the property. LDA2013/0046.**

Note: Councillor Simon declared a Less than Significant Non-Pecuniary Interest in this Item for the reason that he is an acquaintance of the father of the applicant.

Note: Amanda Kalache (objector), Brian Elbayeh (applicant) and George Saad (owner) addressed the Committee in relation to this Item.

Note: A series of photographs provided by Brian Elbayeh (applicant) were tabled in relation to this Item and a copy is ON FILE.

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

- (a) That Local Development Application No. LDA2013/46 at 92 Constitution Road West, Meadowbank, being LOT 2 DP 12059 be approved without further modification, subject to the conditions contained in **Attachment 2** with the deletion of Part 1 - Condition 1, which required a reduction of the floor area of the outbuilding/garage to 56m<sup>2</sup>.
- (b) That the persons who made submissions be advised of Council's decision.

**ITEM 2 (continued)**

**ATTACHMENT 1**

**Record of Voting:**

For the Motion: Unanimous

Note: This matter will be dealt with at the Council Meeting to be held on **24 SEPTEMBER 2013** as substantive changes were made to the published recommendation.

The meeting closed at 5.34pm.

CONFIRMED THIS 17TH DAY OF SEPTEMBER 2013.

Chairperson

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**3 305 BLAXLAND ROAD and 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.**

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

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

**Report dated:** 6 September 2013

**Previous Items:** 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. - Planning and Environment Committee - 7 May 2013  
**File Number:** grp/09/5/6/2 - BP13/1312

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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 (latest amended plans received 28 June 2013)**

This report has been prepared to enable Council's further consideration of a development application (DA) for alterations and additions to the San Antonio da Padova Nursing Home.

At Council's Ordinary Meeting of 14 May 2013, it was resolved to defer consideration of this DA to enable the applicant to submit amended plans addressing the following issues of concern (summarised – refer to the Background section of the report for the full resolution):

1. Vehicle access (driveway on North Road), in particular the concerns raised by the Roads and Maritime Services (RMS);
2. The height of the building on the eastern side;
3. Landscaped area – both the overall amount of landscaping, and also the need to provide more of a buffer to the adjoining properties to the east;
4. Visual bulk, setbacks and architectural modulation of the proposed building on the western side (to North Road).

Amended plans were received from the applicant on 28 June 2013 to address the above issues which include the following amendments:

- An increased setback of approximately 12m from the top floor level ("level 2") to the eastern boundary through reduction in amount of floor space (by approx. 210m<sup>2</sup> from what was on the eastern side) at this level.
- Reduction in the total overall number of beds (from 112 to 106 beds).

**ITEM 3 (continued)**

- Alteration to the vehicle access and existing driveway in (and parking arrangements adjacent to) North Road – particularly the provision of a physical separation between the existing and proposed parking areas adjacent to North Road.
- Greater articulation to the built form of the building along the North Road frontage – via provision of indented terraces at Levels 1 and 2.
- Landscaping amendments, in particular increase in the overall amount of landscaping and provision of a 2m wide landscaped strip along the eastern boundary.

The amended plans were notified to adjoining owners and previous objectors between 2 and 19 July 2013, and a further **10 submissions** were received. This number includes 2 individual submissions including a submission from Kerry Gordon Planning Services on behalf of the Body Corporate of No 1 Aeolus Ave (immediately to the east), and another 8 submissions from individual unit owners of that adjoining development which state that they support the Kerry Gordon submission. The issues of concern, although valid and reasonable, do not warrant refusal of the application or further amendment, and can be addressed via conditions of consent.

The issues raised in the submissions are discussed in detail in the body of the report. The submissions have suggested conditions of consent be imposed to address specific issues. The applicant has been advised of these suggestions and has indicated agreement to conditions where appropriate.

Although the amended proposal still does not fully comply numerically with the SHSEPP requirements (in terms of height and landscaped area), it substantially addresses the issues of concern previously raised (as summarised above) and is considered to be a reasonable design outcome in the context of the site and surrounds. It is recommended that the DA be approved subject to conditions.

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

**Public Submissions:** A total of 29 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 the first set of amended plans/additional information was re-notified (from 1 to 18 March 2013); and
- (c) A further 10 submissions to the latest set of amended plans – 2 individual submissions (including one from Kerry Gordon Planning Services on behalf of the Body Corporate of No 1 Aeolus Ave) and another 8 submissions from individual unit owners in support of the Kerry Gordon submission.



**ITEM 3 (continued)**

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

**Value of works:** \$15,639,250

**RECOMMENDATION:**

- (a) That Local Development Application No. 2012/247 at 305 Blaxland Road and 5-7 North Rd, Ryde being LOT 1 DP1069680 & LOT A&B DP 414322 be approved subject to the conditions provided in **ATTACHMENT 1**.
- (b) That the objectors be notified of Council's decision in this matter.

**ATTACHMENTS**

- 1 Draft conditions of consent
- 2 Applicant's amended SEPP 1 objection
- 3 Objection from Kerry Gordon Planning Services
- 4 Applicant's response to submission from Kerry Gordon Planning Services
- 5 A4 Plans
- 6 Legal advice from Council's solicitors - CONFIDENTIAL - CIRCULATED UNDER SEPARATE COVER
- 7 Map
- 8 A3 plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER
- 9 Previous Report

Report Prepared By:

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

Report Approved By:

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

**Meryl Bishop**  
**Acting Group Manager - Environment and Planning**

**ITEM 3 (continued)****2. Site** (*Refer to attached map.*)

<b>Address</b>	:	305 Blaxland Road and 5-7 North Road, Ryde
<b>Site Area</b>	:	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
<b>Topography and Vegetation</b>	:	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.
<b>Existing Buildings</b>	:	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**

<b>Zoning</b>	:	<ul style="list-style-type: none"><li>• R2 – Low Density Residential – Ryde LEP 2010</li></ul>
<b>Other</b>	:	<ul style="list-style-type: none"><li>• Ryde Local Environmental Plan 2010 – Mandatory Provisions</li><li>• State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (referred to as “SHSEPP” throughout this report)</li><li>• Draft Ryde LEP 2011 (R2 Low Density Residential)</li><li>• Ryde DCP 2010</li></ul>

**ITEM 3 (continued)**



**3. Background**

The previous report to Planning & Environment Committee 7 May 2013 contains an assessment of the proposal as originally submitted, and details of the background to the DA up until that point in time.

Following the Planning & Environment Committee's consideration of this DA, Council at its Ordinary Meeting of 14 May 2013 resolved the following:

- (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;*

**ITEM 3 (continued)**

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.*
- (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.*

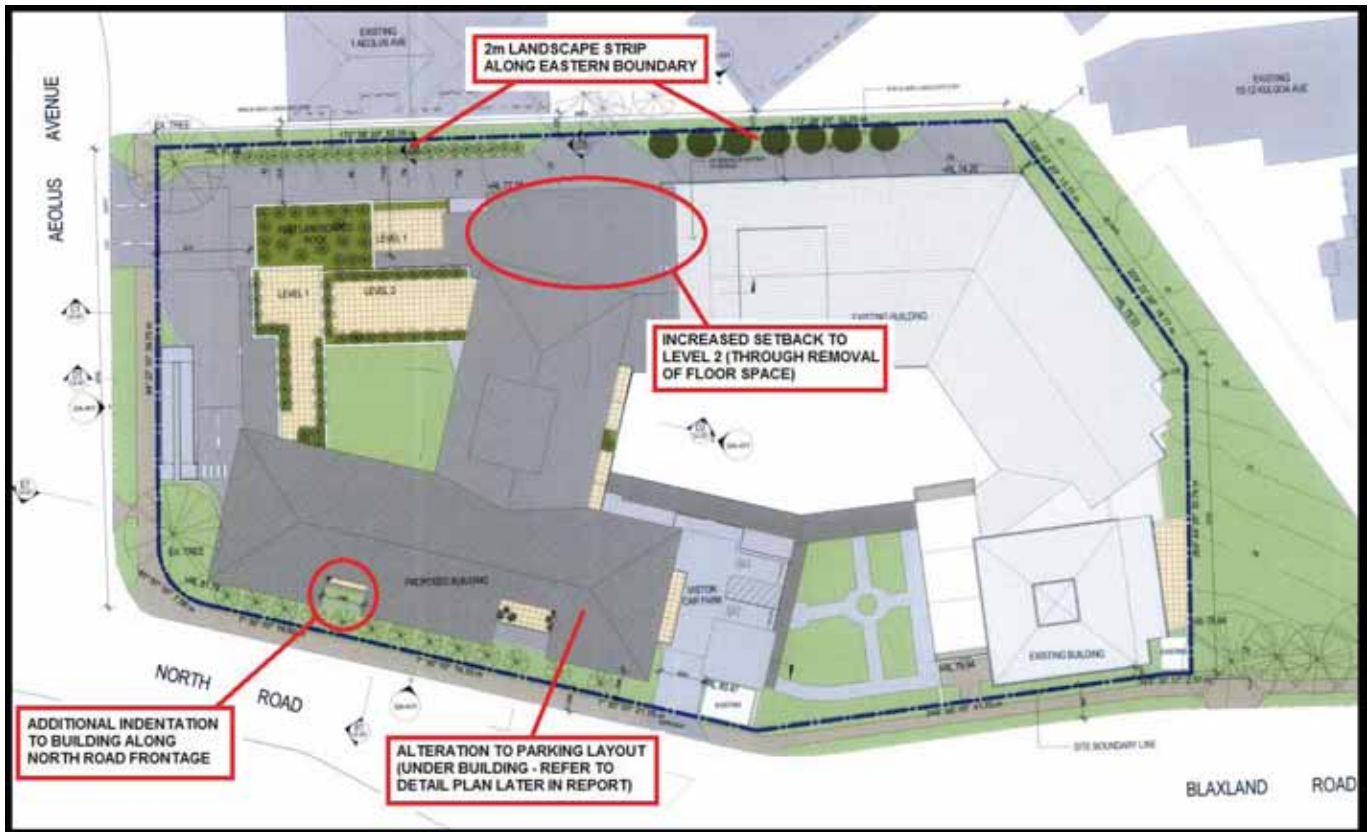
**4. Proposal**

The amended plans received 28 June 2013 include the following changes:

- The total number of beds in the nursing home is now proposed to be 106 beds (reduction of 6 from the original proposal).
- Provide an increased setback of approximately 12m from the top floor level (“level 2”) to the eastern boundary through reduction in amount of floor space (by approx. 210m<sup>2</sup> from what was on the eastern side) at this level.
- Alteration to the vehicle access and existing driveway in (and parking arrangements adjacent to) North Road. The existing visitor parking area directly accessible off North Road is now proposed to contain 6 spaces and 1 ambulance bay, and another 5 spaces with access only off Aeolus Ave. There is to be a physical separation between the existing and proposed parking areas adjacent to North Road.
- Greater articulation to the built-form of the building along the North Road frontage – via provision of indented terraces at Levels 1 and 2.
- Amendments to landscape design – in particular a landscaped strip approx. 2m wide is proposed along the eastern boundary (except where vehicle passing bay is proposed in the driveway).

### ITEM 3 (continued)

The following plan shows the changes in the latest amended plans:



### 5. Submissions

The amended plans were re-notified to adjoining owners and previous objectors, in accordance with Development Control Plan 2010 – Part 2.1, Notification of Development Applications for a period from 2 to 19 July 2013.

In response to this process, a further **10 submissions** were received to the latest set of amended plans – 2 individual submissions including another submission from Kerry Gordon Planning Services on behalf of the Body Corporate of No 1 Aeolus Ave (immediately to the east) and another 8 submissions stating that they support the Kerry Gordon submission.

The Kerry Gordon submission is lengthy and pertinent, and so it is **ATTACHED** in full to this report (see Attachment 3). A copy of this submission was provided to the applicant for review, and the applicant's response is held at Attachment 4.

### ITEM 3 (continued)

The issues of concern raised in the further submissions are summarised and discussed as follows:

- A. *Amended proposal still does not comply with the SHSEPP.*** *The latest amendments are more significant in nature and are an improvement in terms of impacts on No 1 and 3 Aeolus Ave. However, the changes still do not achieve compliance with the SHSEPP (in terms of height and landscaping) – and the development is still considered to be an overdevelopment which impacts on No 1 and 3 Aeolus Ave. The proposal should comply with the 8m height control and the landscaping control, which would be consistent with Council’s previous resolution.*

Comment: It is noted that the amended proposal still does not fully comply with the height and landscaped area requirements of the SHSEPP, however the amended plans substantially address the issues of concern previously raised, and it is considered that the amended design is a reasonable design outcome in the context of the site and surrounds.

The issues regarding compliance with the SHSEPP in terms of height and landscaped area are fully discussed later in this report (refer to the Relevant State Environmental Planning Policies section below).

- B. *Request for condition – highlight window to 1<sup>st</sup> floor sitting room window.*** *Notwithstanding the position that the development should be amended to comply with the SHSEPP, a condition is requested for the replacement of the first floor sitting room window in the eastern façade with a highlight window.*

Comment: The objection notes that the first floor sitting room is located opposite the living room/balcony of units in the building at 1 Aeolus Ave, and within 12m (usually considered a reasonable distance to ensure privacy separation) of that building.

The applicant was advised of this request, and they have agreed to the imposition of a condition requiring a highlight window.

Therefore, given such agreement, it is considered that the issue regarding privacy impacts from the 1<sup>st</sup> floor sitting room is satisfied subject to condition 1(a). The following drawing is part of the east elevation showing the location of the room in question.

**ITEM 3 (continued)**



- C. Request for condition – replacement of Level 1 roof terrace with landscaped roof.** This condition is requested to address adverse impacts of visual and acoustic privacy given the proximity of the terrace to the neighbouring building at No 1 Aeolus Ave.

Comment: The objection notes that the Level 1 roof terrace is close to the neighbouring building and could potentially be used by multiple occupants/visitors. Although a privacy screen is proposed to the terrace, the objection states that this will not ensure acoustic privacy is maintained. The objection also states that the development (overall) contains numerous other terraces and outdoor areas so that replacement of one small terrace is a reasonable request.

The applicant was also advised of this request, but has not agreed to the suggested amendment (to a landscaped roof). In response, the applicant has made the following comments in relation to the Level 1 terrace:

*“... the potential impacts from this terrace are overstated for the following reasons:*

- *this terrace is clearly a secondary external space, given its limited size and location;*
- *the use of the terrace must be considered within the context of the nature of the building - a residential care facility providing 'ageing in place' accommodation for patients with dementia;*

**ITEM 3 (continued)**

- *in addition to be being separated by 9m from No. 1 Aeolus Avenue, this small terrace is provided with a 1.8m solid screen for the entire length of its eastern edge, and the size of the balcony is further restricted by the provision of a planter box adjacent to that screen; and*
- *the 1.8m high screen sits on top of the planter box, and will therefore prevent any direct line of sight between a person on this terrace and a person on the balcony of Level 2 of No. 1 Aeolus Avenue.*

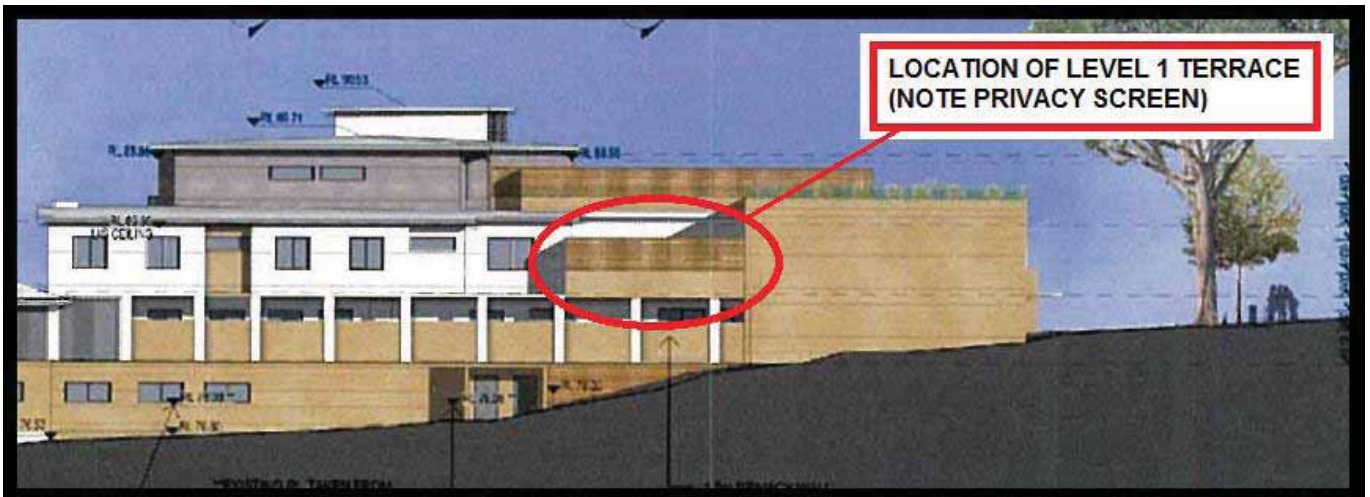
*For these reasons we consider that this terrace will not result in any adverse visual or acoustic privacy impacts for the adjacent building. Our client therefore does not agree to converting this terrace to a roof garden. However to reinforce the intention that the function of this terrace is a quiet, passive area, our client is agreeable to a condition that would restrict the use of this particular terrace to between 8am and 8pm.”*

The applicant's response regarding the Level 1 terrace is supported. Whilst the terrace will be located off the living/dining and quiet sitting area, it is relatively small in size (4.52m x 7.5m), and is secondary in nature to another larger terrace on the northern side of the new building. The solid 1.8m screen and planter box already indicated on the plans are considered sufficient to preserve privacy for the neighbouring building. It would be unreasonable to require that this small terrace be deleted, however it is reasonable to require a limitation on the hours of use as suggested by the applicant. Condition 73 is recommended in this regard.

The following plan and elevation shows the location of the Level 1 terrace in question.



**ITEM 3 (continued)**



- D. Request for condition – provision of detailed landscaping and maintenance plan.** The objection supports the provision of a 2m wide landscaping strip, however concerns are raised regarding the location of the passing bay (which is adjacent to the neighbouring building), and also the lack of detail on the type of landscaping, and the maintenance requirements of such landscaping. A condition is requested for the re-location of the passing bay (so it the landscaping strip extends to the southern end of the front building at No 1 Aeolus Ave), and provision of details on the type/maintenance requirements of such landscaping.

**ITEM 3 (continued)**

Comment: A suggested condition has been provided in the submission, as follows:

***Landscape Plan***

*Amended landscape plans/specifications are to be provided for approval with the Construction Certificate Application showing the following:*

- (a) The 2m wide landscape strip adjacent to the eastern boundary shall be amended such that it extends to the southern end of the front building at No. 1 Aeolus Avenue, Ryde, with the passing bay relocated further southward;*
- (b) The 2m wide landscape strip adjacent to the eastern boundary shall be planted with a tree and a shrub layer, with the shrub layer to achieve a maturity height of 3m and the tree layer to achieve a maturity height of 8m from the Aeolus Avenue frontage to the southern edge of the first floor terrace off the sitting room and 12m for the remainder of the landscape strip;*
- (c) Species selection and planting spacing within the 2m wide landscape strip adjacent to the eastern boundary shall be made to ensure a continuous screening effect of the bulk of the proposed building as viewed from No. 1 Aeolus Avenue, Ryde; and*
- (d) A detailed specification shall be provided for the landscaping proposed in the 2m wide landscape strip adjacent to the eastern boundary, to include soil preparation, species choice and spacing and ongoing maintenance requirements (including replacement of dead plants) to ensure a continuous screening effect is achieved by the landscaping.*

***Reason:*** *To ensure the amenity of No. 1 Aeolus Avenue, Ryde is maintained.*

The location of the landscaped strip and passing bay as currently proposed is shown on the plan in the "Proposal" section of this report, above.

The applicant has also been advised of the request for the relocation of the passing bay, and they indicate that they agree to such relocation (as required in (a) of the above suggested condition). This relocation has been discussed with Council's Development Engineer, who has raised no objections.

In relation to the level of detail in the landscaping plan (ie parts (b) to (d) above), the applicant has generally agreed, however advised that part (b) is too prescriptive and part (c) is sufficient to achieve the desired outcome of providing landscaped screening for the adjoining building.

It is not considered that the suggested condition (in part (b)) is too prescriptive, it only calls for a mixture of shrubs and trees which will grow to a particular height, with enough flexibility to enable a range of particular types of shrubs and trees. Condition 3 is included in the recommendation.

**ITEM 3 (continued)**

- E. *Built form issues – North Road frontage.*** *Concern is raised that the amended plans do not sufficiently address previous concerns regarding built form of the building along North Road, in particular the lack of an adequate setback to North Road, the excessive height and scale of the building, and the lack of landscaping along the North Road frontage.*

Comment: These issues are discussed in detail in the SHSEPP assessment (below). It is considered that the amendments have provided sufficient architectural modulation to address previous concerns regarding visual bulk when viewed from North Road.

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

As noted in the previous report, the property is zoned R2 Low Density Residential under Ryde LEP 2010, and the proposed development is defined as a “Residential Care Facility” which is permissible with the consent of Council.

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).

As a result of the amended plans (28 June 2013), the height of the development is now 10.62m at the highest point (which is the ceiling for Level 2 at the south-eastern corner). Where the building is closest to the eastern boundary, the building has been lowered to now have a maximum height of 9.45m (measured to the ceiling of Level 1).

Issues relating to the building’s height, and the amended SEPP 1 objection submitted by the applicant to support the amended plans regarding the non-compliance with the SHSEPP, are discussed later in this report.

**ITEM 3 (continued)**Clause 4.4(2) – Floor Space Ratio (FSR)

As noted in the previous report, this clause in Ryde LEP 2010 prescribes a maximum FSR of 0.5:1 for this site. Clause 4.4A then states that the FSR “... only applies to development for the purposes of a dwelling house or dual occupancy (attached)” – so the FSR controls in Ryde LEP 2010 do not apply to this development.

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

Clause 5.10 – Heritage Conservation

As noted in the previous report, this clause requires Council to consider the impacts of development proposals on the heritage significance of nearby heritage items (listed under Ryde LEP 2010), and North Road is listed as a heritage item under Ryde LEP 2010.

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). In the previous report, it was noted that if the proposal was amended in terms of new driveway location or any works to the road surface, then appropriate archaeological supervision during the construction stage would be required as a condition of consent.

Given that the amended plans have not made any change to the driveway arrangements in North Road, then such a condition is not necessary.

**(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. A full assessment of the proposal in terms of the relevant clauses of the SHSEPP was undertaken in the original assessment report.

For many of the relevant SHSEPP clauses, the amended plans do not require further comment beyond what is in the original assessment report. Where required, an assessment against the relevant clauses regarding the amended plans is made in the following section:

**ITEM 3 (continued)****Clause 4 – Land to which the Policy applies**Comment

As indicated in the original assessment report, the proposed form of housing is permissible under the SHSEPP.

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

Condition 62 will ensure compliance with this clause in the SHSEPP, and which require:

- (a) *only the kinds of people referred to in sub clause (1) may occupy any accommodation to which the application relates, and*
- (b) *a restriction as to user to 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).*

**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. A Site Compatibility Certificate is not required as the development is permissible with consent under Ryde LEP 2010.

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

As noted in the original assessment report, the proposal complies with the requirements of this clause 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**Comment

The original assessment report noted that 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.

### ITEM 3 (continued)

#### Clause 28 – Water and Sewer

##### Comment

As noted in the original assessment report, if Council decides to approve the DA, a condition will 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. See condition 66.

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

##### 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. Issues regarding the bulk, scale, built form and character of the amended plans for the proposed development are discussed throughout this report.

### Part 3 – Design Requirements

Part 3 of the SHSEPP contains various Design Requirements which, in terms of the amended plans 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	Consideration to the provisions of the Senior Living Policy was made in the original assessment. Whilst amendments to the proposal have been made, a full re-assessment is not required in terms of this Policy. This report gives consideration to the proposed amendments.	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 (ie clauses 33-39 below)	Consideration had been given to the principles as set out in this table	Yes

**ITEM 3 (continued)**

SEPP Provisions	Assessment	Comply
<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> </ul>  <ul style="list-style-type: none"> <li>• RMS Motor Registry immediately to the west (across North Rd and corner of Blaxland Road):</li> </ul>  <ul style="list-style-type: none"> <li>• An older-style 2 storey townhouse development to the south (291 Blaxland Road):</li> </ul> 	<p>Yes</p>

**ITEM 3 (continued)**

SEPP Provisions	Assessment	Comply
<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>	<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> </ul>  <ul style="list-style-type: none"> <li>Ryde TAFE further to the south, western side of Blaxland Road:</li> </ul>  <p>The amended plans have been prepared in response to 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), as discussed throughout this report.</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 (elsewhere in report).</p>	



**ITEM 3 (continued)**

<b>SEPP Provisions</b>	<b>Assessment</b>	<b>Comply</b>
<p>(c) maintain reasonable neighbourhood amenity and appropriate residential character by:</p> <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> <p>(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, &amp;</p> <p>(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, &amp;</p> <p>(f) retain, wherever reasonable, major existing trees, &amp;</p> <p>(g) be designed so that no building is constructed in a riparian zone.</p>	<p>The amended plans have been prepared in response to 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), as discussed throughout this report.</p> <p>See below for detailed discussion.</p> <p>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.</p> <p>A landscaping plan has been submitted that proposes tree and shrub planting on the North Rd frontage &amp; internally, while others are to be transplanted &amp; used elsewhere on site.</p> <p>Not located in a riparian zone.</p>	

**ITEM 3 (continued)**

<b>SEPP Provisions</b>	<b>Assessment</b>	<b>Comply</b>
<p>Cl. 34 Visual and acoustic privacy:</p> <p>The development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:</p> <p>(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, &amp;</p> <p>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>	<p>Issues of concern have been raised in submissions received from neighbours – as discussed in the Submissions section of this report.</p> <p>In summary – the amended plans have addressed many of the previous concerns regarding visual privacy on the eastern side of the development, where the site adjoins a site occupied by residential flat buildings. Other concerns are proposed to be addressed via conditions of consent as discussed in the Submissions section of this report.</p>	<p>See discussion in Submissions section of this report.</p>
<p>Cl. 35 Solar access and design for climate:</p> <p>The proposed development should:</p> <p>(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, &amp;</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</p>	<p>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 &amp; receive the required amount of sunlight. Most of the rooms face east or west thus receiving good sunlight.</p> <p>Resident's access to sunlight is maximised by the provision of a number of north facing terraces as well as common living areas.</p>	<p>Yes</p>

**ITEM 3 (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 Development Engineer has advised that the submitted stormwater drainage plans generally comply with Council's requirements for stormwater drainage (Part 8.2 DCP 2010) and are suitable for approval subject to conditions.</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. 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 3 (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.		
CI 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.  Previous significant concerns raised by the NSW RMS – regarding the vehicle driveway onto North Road and in particular its proximity to the Blaxland Road intersection – have been addressed in the amended plans, and the RMS have indicated that the amended plans are satisfactory. See Referrals Section of this report.	Yes
CI.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

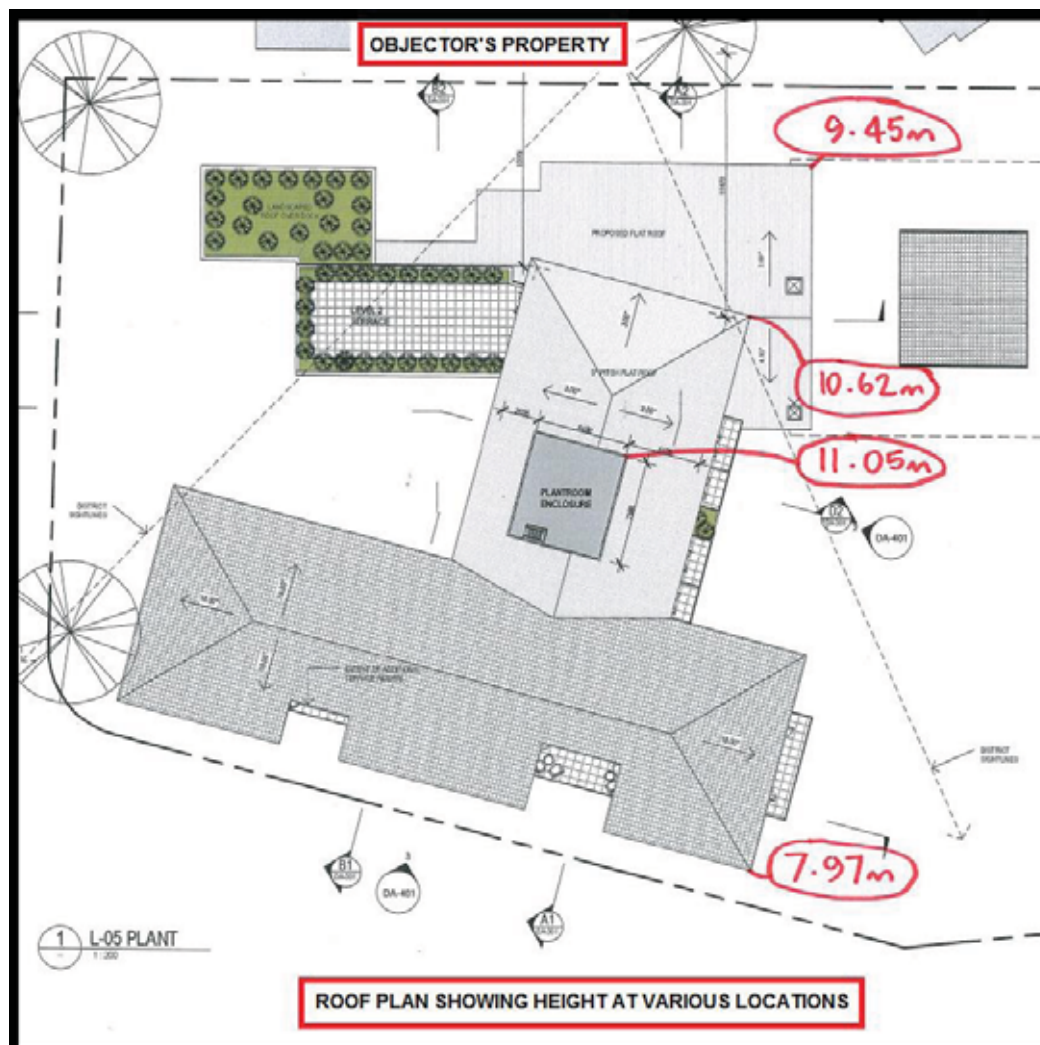
Concerns regarding bulk and scale were raised in the original assessment report in relation to two particular locations in the proposal – the proposed additions on the eastern side of the site (adjoining 1 and 3 Aeolus Ave), and also the new building on the western side fronting North Road.

**ITEM 3 (continued)**

*Eastern Side of the Building (adjacent to No 1 and 3 Aeolus Ave)*

Firstly, in regard to the proposed additions to the eastern side of the building, the main issue of concern (in the previous plans) was the height of the building where it was immediately adjacent to the eastern boundary. At this location, the height was proposed to be 12.12m (measured to ceiling level) and 4 storeys in height in the original plans.

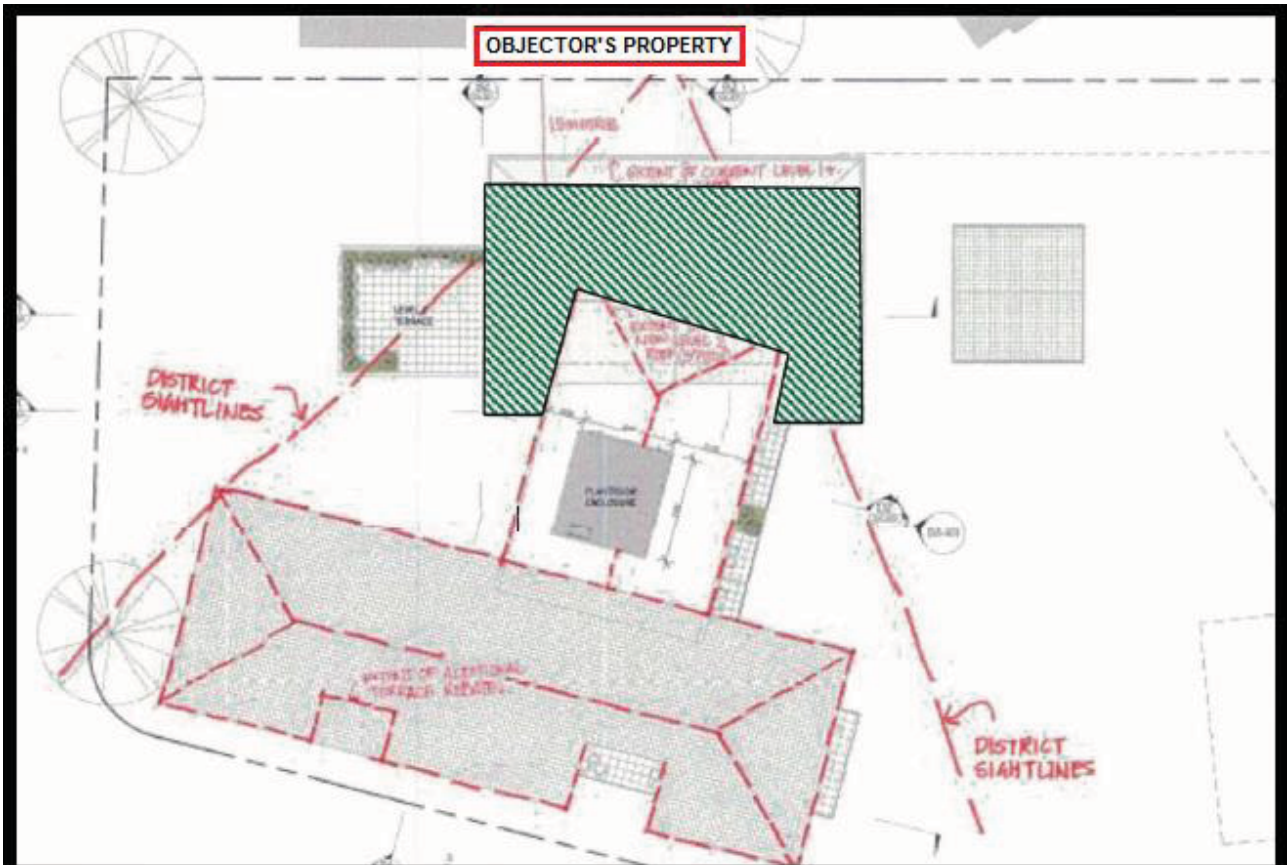
The proposed height at the point closest to the eastern boundary has been reduced so that it is now a maximum 9.45m. The maximum overall height (ie measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point) is now proposed to be 10.62m, however this is now more towards the centre of the building and away from the eastern boundary. The following plans (roof plan and south elevation) show the heights of the proposed building at various locations. It is noted that these drawings show the maximum height to be 11.05m; however this is to the roof of the plant room which is not a “floor” as defined in the SHSEPP.



**ITEM 3 (continued)**



The main issue of concern regarding the height on the eastern side related to its impacts on the adjoining residential flat buildings to the east (in terms of visual bulk and scale, and also loss of view/outlook). In the amended plans, a significant amount of floor space (210m<sup>2</sup>) at the highest level (level 2) at the eastern side has been removed, and so the impacts on the adjoining residential flat building are also significantly reduced. The following drawing is a sketch of the roof plan provided by the applicant to show where the floor space has been removed (shown hatched green below).

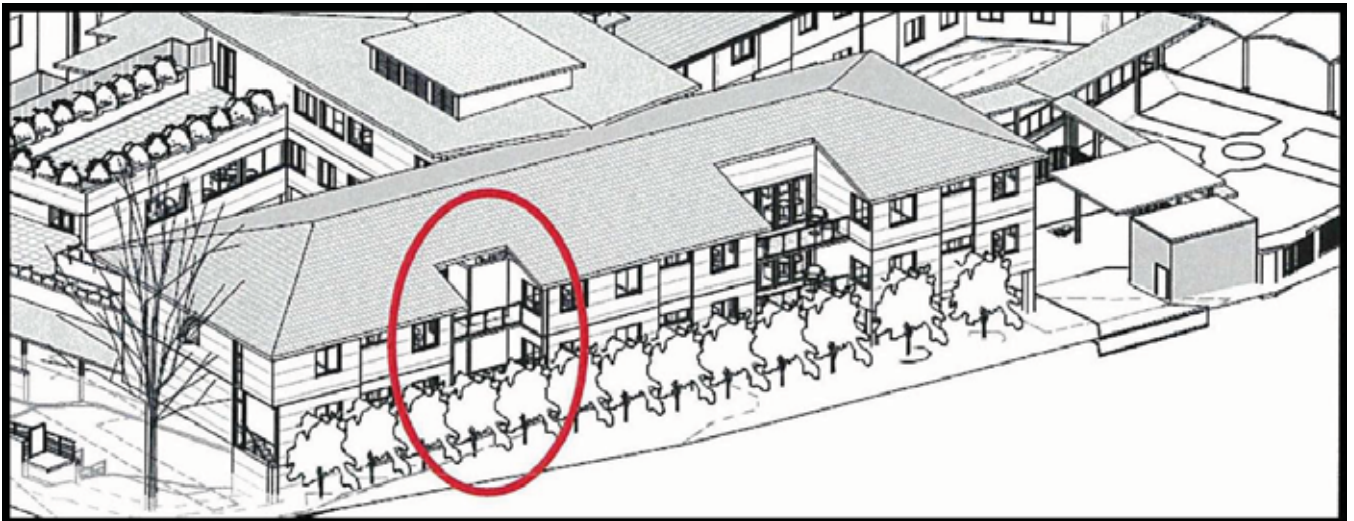


### ITEM 3 (continued)

#### *Western Side of the Building (facing North Road)*

In relation to the proposed new building on the western side fronting North Road, the main issues of concern related to the impacts caused by a lack of architectural modulation along the North Road frontage. The amended plans have also satisfactorily addressed this issue with the provision of an additional indentation at the northern end of this building (an additional outdoor terrace at both levels). This indentation is shown in the following drawing (3D perspective provided by the applicant).

It is considered that the provision of this additional indentation to the building will reduce previous concerns regarding bulk and scale when viewed from North Road. The length of the building's façade to North Road now has 2 indentations to break down the overall building mass into smaller elements, and this will also be beneficial in terms of allowing a greater amount of natural light into more of the building's internal space.



#### Setbacks

In addition to the bulk and scale issues of concern discussed above, concerns were raised in the previous report regarding the building's setback (2.865m to North Road). The main issue of concern was that the perceived bulk and scale of the building at this setback would be made worse by the lack of architectural modulation to the building.

Whilst there are no specific setback controls in the SHSEPP, when applying Council's DCP controls as a guide, the North Road frontage would effectively be considered to be a "secondary setback" given that the building has been designed to have its "front" setback to Aeolus Ave (as well as its main pedestrian and vehicle entrance) to the north. Council's DCP controls (eg Part 3.3 Dwelling Houses and

**ITEM 3 (continued)**

Dual Occupancy (Attached), and Part 3.4 Residential Flat Buildings and Multi Dwelling Housing) allow a smaller setback to “secondary” street frontages than to the main “front” setback.

The provision of indentations to the North Road frontage as discussed above has resolved the previous issue of concern regarding the setbacks and visual bulk and scale when viewed from North Road. As shown in the 3D perspective (above), when viewed as a whole, the building facing North Road will now have architectural modulation from the 2 indented outdoor terrace areas.

**Part 4 – Development Standards to be complied with**

Part 4 (Clause 40) of the SHSEPP contains various Development Standards which (in relation to the amended plans) 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.

SEPP Provisions	Proposal	Comply
<b>Clause 40 Development Standards – minimum sizes &amp; building height</b>		
(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.	Maximum 10.62m at highest point. 9.45m where the building is at its closest to the 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)  Partly 4 storeys through the central part of the new building – though the extent of the 4 storey component has been significantly reduced and the lowest level is excavated below ground level.	No SEPP 1 objection submitted



**ITEM 3 (continued)**

<b>SEPP Provisions</b>	<b>Proposal</b>	<b>Comply</b>
(c) a building located in the rear 25% area of the site must not exceed 1 storey in height	<p>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.</p> <p>Although no new buildings are proposed in the rear 25% of the 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.</p>	No SEPP 1 objection submitted

**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 amended plans in terms of Clause 48 appears in the Table below.

<b>SEPP Provisions</b>	<b>Assessment</b>	<b>Comply</b>
CI 48 - Standards that cannot be used to refuse development consent for residential care facilities		
<p>(a) <u>Building height</u>: 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).</p> <p><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.</p>	<p>According to the SHSEPP height definition (see Note in the column to the left):</p> <p>The eastern building (addition to existing) has a maximum height of 10.62m at the highest point. Where the building is at its closest to the eastern boundary, it has a maximum height of 9.45m. Therefore height could be used as a ground for refusal.</p> <p>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.</p>	No

**ITEM 3 (continued)**

<b>SEPP Provisions</b>	<b>Assessment</b>	<b>Comply</b>
(b) <u>Density and scale</u> : 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 5248m <sup>2</sup> which provides a FSR of 0.96:1.	Yes
(c) <u>Landscaped Area</u> : if a minimum of 25m <sup>2</sup> of landscaped area per residential care facility bed is provided,	106 beds x 25m <sup>2</sup> per bed requires 2650m <sup>2</sup> . The amended plans have increased total amount of landscaping throughout the site to 2552m <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 = 10.6 spaces 1/2 staff = 12.5 spaces Total required = 23.1 (say 24) spaces PLUS Ambulance = 1 space  Total parking provided = 27 car spaces and 1 designated ambulance space	Yes

Landscaped Area

As indicated in the Table above, the SHSEPP requires a total of 2650m<sup>2</sup>, and the development provides a total of 2552m<sup>2</sup>, as such there is now a shortfall of total landscaped area required of some 98m<sup>2</sup> (which has been reduced from a shortfall of 410m<sup>2</sup> in the original plans). It should be noted that the landscaping requirements within clause 48 are not a “development standard”, rather they are “development standards that cannot be used as grounds to refuse consent” if the development complies with such standards. Accordingly a formal SEPP 1 objection is not required, however landscaping provision could be used as a ground for refusal given the numerical non-compliance.

**ITEM 3 (continued)**

The landscaping provision has been increased in the amended plans in the following ways:

- Increasing the width of the landscaped area along the eastern boundary to a 2m wide landscaped bed running the full length of the boundary (except where a vehicle passing bay is provided).
- An increase in width of the landscaped area adjacent to the North Road boundary by deleting the previous 2 parallel parking spaces in the original plans.

The main issue of concern regarding the landscaping provision related to the need to provide more of a buffer to the adjoining properties to the east, to improve concerns regarding visual privacy, amenity and bulk. The amended plans have addressed these concerns and are now considered satisfactory.

As noted in the Submissions section of the report, the objectors have generally indicated that they are satisfied with the amended landscaping provision, subject to a minor adjustment to ensure the landscape strip extends to the southern end of the building at 1 Aeolus Ave, with the passing bay being relocated further southward – and also subject to details being provided regarding the type of landscaping to be planted. These matters can be addressed via conditions of consent (see condition 3).

**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). In summary, these height controls prescribe:

- Clause 40(4)(a): A maximum height of 8m (amended proposal is 10.62m at the highest point of the additions, which occurs at the south-eastern end of the extensions to the building at Level 2)
- Clause 40(4)(b): A maximum height of 2 storeys (proposal is partly 4 storeys through the central part of the new building, though the extent of the 4 storey component has been significantly reduced and it is noted that the lowest level is excavated below ground level);
- 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).

The applicant’s amended SEPP 1 objection is provided in full at **ATTACHMENT 2**.

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.

**ITEM 3 (continued)**

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:

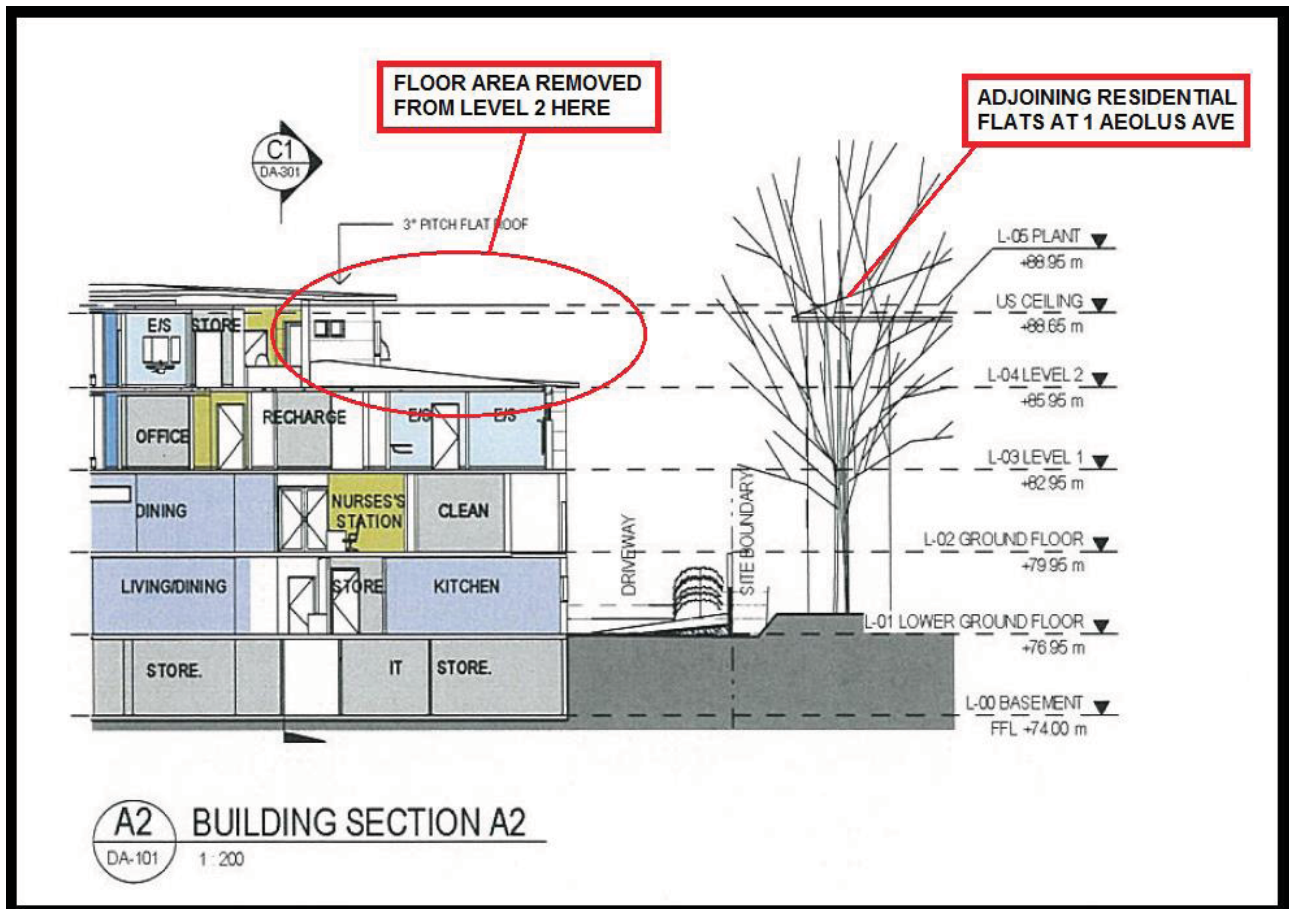
1. *The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*

Comment: The applicant has prepared an amended SEPP 1 objection to relate to the amended plans. The main issue of concern regarding building height is how it impacts on the adjoining residential flat buildings to the east (1 and 3 Aeolus Ave).

The SEPP 1 objection has noted that in response to these concerns, the proposal has been amended to remove a substantial amount of floor space at the upper level (Level 2) at the eastern end. As a result, the height of the building at its eastern end is now much lower than the adjoining residential flats (see drawing below), which addresses one of the major design issues in the original plans.

Further comments on whether the objection is well-founded and the "reasonableness" and "necessity" for compliance with the standard are discussed as follows.

ITEM 3 (continued)



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*

As noted in the previous report on this application, it may be considered appropriate to apply some flexibility to the SHSEPP height controls on this site, which is a larger than usual site and is already partly developed as a nursing home (at the southern end). The existing building has a similar built form (generally 2 storeys plus parking below) to that proposed in this application. It is also noted that the site has a significant gradient from the street (approximately 1 in 8 or 12.5%), and because a nursing home generally requires its floors to be level (for easy internal access for residents), it is not possible to step the building down the site (which requires internal steps) such as in a residential dwelling. As a result it is unavoidable that there will be non-compliances with height in some locations on a sloping site – and so some flexibility is required in keeping with the aims of SEPP 1.

**ITEM 3 (continued)**

Concerns were raised in the original assessment regarding the extent of the non-compliance to the SHSEPP height controls, which were up to 12.12m (4.12m over the 8m maximum) and 4 storeys (2 storeys proposed), and in particular the fact that the highest point occurred adjacent to the eastern boundary. As noted above, the height at this location has been reduced to be 9.45m at the eastern end. The highest point (measured according the SHSEPP definition) is now 10.62m and the location of this is more towards the centre of the site.

It is considered that strict compliance with the Standard would hinder the attainment of these objectives. A reduction in the height of the development to achieve full compliance with the numerical standards would require removal of the entire upper level (Level 2, and also part of Level 1 to achieve compliance with the number of storeys). As indicated previous in this report, the amended proposal has reduced the amount of floor space by some 210m<sup>2</sup> at the eastern side of Level 2, which has resulted in the reduction of 6 of the resident rooms. Removing an entire floor level would obviously have a significant impact on the financial viability of the development. This would prevent provision of a much needed development for seniors housing (in other words it would not enable the “promotion and co-ordination of the orderly and economic use and development of land”).

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. As discussed in the previous assessment report, concerns were raised that the proposed non-compliances with the controls caused unacceptable impacts on the immediate neighbours (to the east). The amended plans have largely addressed these concerns. Although the numerical non-compliances with the SHSEPP remain, and there may be some impact of the new development on neighbouring properties, these impacts are considered to be outweighed by the benefits that this development will bring, in particular the provision of additional accommodation for dementia housing.

**ITEM 3 (continued)**

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:

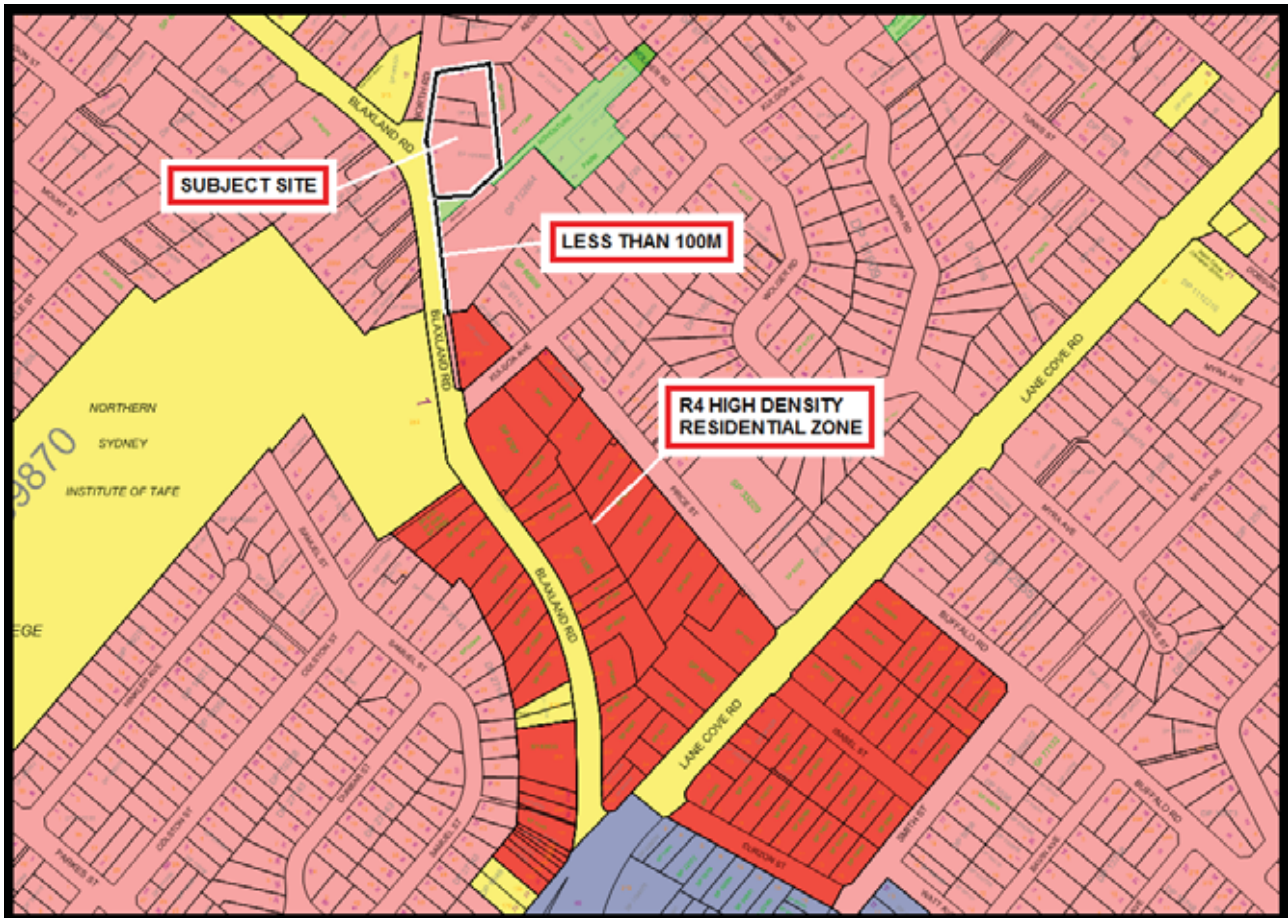
1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if 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: In relation to the above tests for whether an objection is “well-founded”, the applicant’s SEPP 1 objection has noted that the height clause in the SHSEPP does not nominate any objectives. In general, the objectives of a height control in other planning documents (eg in an LEP or a DCP) include ensuring the proposed buildings are of a scale compatible with the existing and desired future character of the locality, and ensuring impacts related to the height are minimised (ie such as visual bulk and scale, overshadowing, views etc.). As noted above, the amendments to the proposal have addressed previous concerns regarding impacts on the adjoining property to the east.

These tests also make reference to previous development consents which depart from the standard. In this regard, it is noted that the existing nursing development on the site (approved in 2001) is up to 8.65m at its highest point (at the south-eastern end), which also does not comply with the existing SHSEPP or the previous SEPP No 5 (which was the planning control applicable at that time).

The tests above also make reference to the appropriateness of the zoning of the site. In this regard, the Ryde LEP zoning map for this location is shown below. This zoning map shows that the subject site and the adjoining site to the east (containing the older style residential flats) are located very close to the R4 High Density Residential zone, which allows higher density residential development including residential flats. That zone extends along Blaxland Road from the intersection with Lane Cove Road to within 100m of the subject site.

**ITEM 3 (continued)**



Overall, it is considered that the applicant's amended SEPP 1 objection to reflect the amended plans is reasonable and well-founded.

**(c) The provisions of any Draft Local Environmental Plan applying to the land**

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.



**ITEM 3 (continued)****(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-ridden 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-ridden by BASIX requirements for residential developments including “Seniors Housing”. As noted in the previous report, 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'.*

*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. See condition 2.

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 (see condition 15).

**ITEM 3 (continued)**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.

Section 94 Contributions Plan 2007

Council's current Section 94 Contributions Plan (adopted 19 December 2007 and as amended 16 March 2011) requires a contribution for the provision of various additional services required as a result of increased development.

However, this type of development may be exempt from the need to pay Section 94 contributions because of a previous (2007) Direction under Section 94E of the Environmental Planning and Assessment Act 1979 made by the (former) Minister for Planning.

Advice has been sought from Council's solicitors regarding how Section 94 contributions apply to this development (copy CIRCULATED UNDER SEPARATE COVER as a Confidential Attachment). Issues regarding Section 94 contributions and how they apply to this development are discussed as follows.

***Section 94E Direction***

On 14 September 2007, the (former) Minister for Planning made a Direction under Section 94E of the Environmental Planning & Assessment Act 1979 regarding section 94 contributions for developments under (the former) State Environmental Planning Policy (Seniors Living) 2004 – ie the predecessor of the current SHSEPP.

This direction states that a condition requiring Section 94 contributions cannot be imposed for "any form of seniors housing" as defined in the Seniors Living SEPP, for developments made by a "social housing provider" as defined in the SEPP. This definition was carried through to the current SHSEPP, and among other things includes "a not for profit organisation that is a direct provider of rental housing to tenants".

In order to benefit from the exemption provided in this Section 94E Direction, the applicant would need to demonstrate compliance with the definition of "social housing provider".

**ITEM 3 (continued)*****Provisions of Council's Section 94 Contributions Plan 2007***

Council's Section 94 Contributions Plan applies to a range of development types, including "seniors housing". In particular, the Contributions Plan contains the following note in relation to "seniors housing":

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

The above note in the Contributions Plan states that the occupancy rate relates to "self-contained dwellings" which (within the Contributions Plan) has an occupancy rate of 1.5 persons per dwelling. However, this type of occupancy rate is not applicable to the subject development, which are for single rooms with one bed per room.

Also, it is necessary to consider the demand for community facilities and services likely to occur from this development – having regard to the various types of contributions for which Section 94 contributions are levied.

In this regard, Council's Section 94 Contributions Plan requires contributions for the following types of community facilities and services:

- Community and Cultural Facilities
- Open Space and Recreation Facilities
- Civic and Urban Improvements
- Roads and Traffic Management Facilities
- Transport and Accessibility Facilities
- Cycleways
- Stormwater Management Facilities
- Plan administration
- Parking (levied where a development has a shortfall against Council's parking requirements)

As noted previously, the development is for low to high care accommodation for dementia patients, who will be contained within the site, with security controls in place to restrict them from being able to leave the site. Therefore, it is reasonable to say that such a development would not generate a demand for all of the Contribution types listed above.

**ITEM 3 (continued)**

***Recommendation regarding Section 94 Contributions***

In terms of resident numbers, the development proposes to increase the capacity of the nursing home from 50 beds (existing) to 106 beds, ie 56 additional beds.

In accordance with Council’s adopted Section 94 Contributions Plan, the contributions payable for 56 additional “self-contained dwellings” (with an assumed occupancy rate of 1.5 persons per dwelling) would be as follows:

<b>Contribution Type</b>	<b>Amount</b>
Community and Cultural Facilities	\$119,362.48
Open Space and Recreation Facilities	\$293,845.51
Civic and Urban Improvements	\$99,942.78
Roads and Traffic Management Facilities	\$13,633.02
Cycleways	\$8,515.24
Stormwater Management Facilities	\$27,067.26
Plan administration	\$2,296.36
<b>TOTAL</b>	<b>\$564,662.66</b>

However, this development does not propose self-contained dwellings, rather they are individual rooms with a bed and ensuite and a small amount of personal space, with living/dining and recreation areas being provided communally. Therefore it would not be appropriate to fully apply the rates applicable to “self-contained dwellings”. Having regard to the type of development proposed (dementia patients confined to the site) and occupancy rate (1 person per room), the following table shows how the Section 94 contributions payable should be adjusted for this type of development:

<b>Contribution Type</b>	<b>Original Amount</b>	<b>Adjustment Method (see below)</b>	<b>Final Contribution Payable</b>
Community and Cultural Facilities	\$119,362.48	1	Nil
Open Space and Recreation Facilities	\$293,845.51	1	Nil
Civic and Urban Improvements	\$99,942.78	2	\$66,628.51
Roads and Traffic Management Facilities	\$13,633.02	2	\$9,088.68
Cycleways	\$8,515.24	1	Nil
Stormwater Management Facilities	\$27,067.26	2	\$18,044.84
Plan administration	\$2,296.36	2	\$1,530.91
<b>TOTAL</b>	<b>\$564,662.66</b>		<b>\$95,292.94</b>

**ITEM 3 (continued)****Explanation of Adjustment Methods:**

1 = Contribution deleted as the development does not generate demand for this type of contribution/community facility or service.

2 = Contribution applies – but discounted by 1/3 because the assumed occupancy rate in the Section 94 Contributions Plan (seniors housing = 1.5 persons per room) is not the correct occupancy rate having regard to this type of development (1 person per room).

Having regard to the type of development, it is recommended that if Council is mindful to approve the DA, the Section 94 contributions be levied in accordance with the “final contributions payable” in the table above. This proposed contribution rate has been reviewed by Council’s General Counsel who concurs that the calculation method is reasonable and appropriate in the circumstances of this case, having regard to Council’s Section 94 Contributions Plan.

**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**

All relevant issues regarding the likely impacts of the development have been discussed throughout this report. In summary, it is generally considered that although the amended proposal still does not fully comply numerically with the SHSEPP requirements (ie the proposal does not comply in terms of height and landscaped area), it substantially addresses the issues of concern previously raised (as summarised above) and is considered to be a reasonable design outcome in the context of the site and surrounds.

**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**

As noted previously, the amended plans have substantially addressed the issues of concern previously raised regarding this proposal, although there are still some areas of non-compliance with the SHSEPP. However the proposal is considered to be a reasonable design outcome in the context of the site and surrounds. Furthermore, this facility responds to a community need for additional aged housing and therefore it is considered that it is in the Public Interest to support the proposal now that it has been amended to substantially address the previous issues of concern.

**ITEM 3 (continued)****13. Consultation – Internal and External**Internal Referrals

**Development Engineer:** The following comments have been provided by Council's Development Engineer in regard to the amended plans:

**Stormwater Drainage**

*The site is noted to fall moderately to the southeastern corner of the lot where an existing OSD tank servicing the current site on 305 Blaxland Road. The existing system discharges to Council drainage infrastructure located in Council's Adventure Park Reserve which then leads on to connect with the trunk drainage system in Kulgoa Avenue.*

*Due to the site area and location within the catchment, the applicant has been advised by Council that the onsite detention system must be designed such that stormwater discharge from the site is equivalent to an undeveloped (pervious state). Accordingly, the applicant has estimated the system utilising DRAINS software to determine the pre-developed runoff rate and then calculated the determined the required detention volume given the resulting rate of runoff from the proposed development. The proposed runoff rate and discharge rate satisfy the objective of Council's OSD controls and are therefore satisfactory in regards to this aspect. A condition requiring the submission of the detailed plans and design of the system (complying with Councils DCP requirements in terms of construction) is recommending following. An additional condition requiring that a Drainage Engineer is to certify the stormwater drainage system has been designed and constructed to function as intended with these requirements and without adversely impacting neighbouring properties is recommended in the conditions following.*

*The proposal will extinguish an existing drainage easement located on No. 7 North Road which benefits No. 5 North Road. Proof of the revised title plan demonstrating this has been undertaken with should be addressed by a condition of consent.*

**Council Infrastructure and Public Domain**

*The proposed works will require the reconstruction of the existing driveway crossover on Aeolus Avenue and removal of the redundant driveway crossover on the North Road frontage. The footpath fronting the site on North Road should be reconstructed to ensure its service and amenity is consistent with that of the approved development. These works may be addressed by conditions of consent.*

**ITEM 3 (continued)****Vehicle Access and Accommodation**

*The proposed development has been submitted under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004 which stipulates that such a development cannot be refused provided the following levels of offstreet parking (amongst other matters) are provided on the site (Clause 48);*

- *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*
- *1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and*
- *1 parking space suitable for an ambulance.*

*With this in mind, the development provides;*

- *16 staff carspaces in the existing basement level on 305 Blaxland Rd accessed from the Aeolus Avenue frontage. The Statement of Environmental Effects has stated that there will be a total of 25 staff on site at any one time which warrants 13 carspaces be provided under the SEPP requirements.*
- *A total of 11 parking spaces for visitors. The revised architectural plans indicate the development provides 106 beds and which results in there being a carspace for every 9.6 beds satisfying the SEPP requirements.*
- *There is an ambulance bay provided in the carpark area accessed from North Road.*
- *A pickup/ dropoff space fronting the foyer on the driveway accessed from Aeolus Avenue.*

*It is noted that the original proposal has been amended to prevent through vehicle access from Aeolus Avenue to North Road in response to RMS concerns. With respect to vehicle access and the requirements of AS 2890, the following matters are noted;*

- *The width of the access driveway from Aeolus Avenue leading to the new visitor parking area reduces to 4.2m wide in the section adjoining the pedestrian access ramp leading down from the property frontage. This width extends around to the sites frontage on North Road. Whilst the section is relatively short, sight distance from either end of the necking point is obstructed. As such, this could result in a driver having to reverse in the access way in the event there is a vehicle approaching from the opposite direction. This issue could be addressed by extending the pickup/ dropoff area fronting the foyer further east, thereby reducing the length of the necking point and allowing vehicles to overtake one another.*

**ITEM 3 (continued)**

- *The above issue is minimised by the presence of the pickup/ dropoff zone in this location. Pickup/dropoff areas should be marked as “No Parking” spaces which allow vehicles to stand in the location for no longer than 3 minutes. It is foreseeable that the area will be free of vehicles most of the time however to ensure this, the space should be marked as a No Parking zone and this can be addressed by a condition of consent.*

*It is noted that larger (HRV) service vehicles the loading bay area will need to reverse into the bay to enable them to exit the site in a forward manner. Given this does not impose on the public roadway/ footpath, is clear of most pedestrian access areas and there are low traffic volumes anticipated in the site, this matter does not present a significant safety issue and therefore does not warrant further concern.*

**Traffic Generation**

*The submitted Traffic Report has produced traffic generation rates based on the RMS Guide to Traffic Generating Developments, which estimates the following traffic levels;*

- *Daily vehicle trips = 1 – 2 per dwelling.*
- *Evening peak hour vehicle trips = 0.1 – 0.2 per dwelling.*

*The consultant has conservatively utilised the upper end of the scale in terms of traffic generation rates. Based on the revised proposal of 106 beds, the estimated the level of traffic during peak hour evening period will be equivalent to some 11 vehicles per hour (2 way). On assumption that this traffic generation will be distributed to each driveway according to the proportion of parking spaces serving them, the maximum level of traffic generation anticipated is 9 vehicles per hour (a vehicle every 6-7 minutes) during the evening peak hour accessing the northern driveway. This level of traffic generation is unlikely to impact the operation or safety of the surrounding area.*

**Recommendation**

***Assessment of the internal engineering components of the proposed development indicates that it is generally acceptable subject to the application of the following conditions of approval.***

**Other internal referrals:** As indicated in the previous report to the Committee, the DA was originally also referred to Council’s Environmental Health Officer, Executive Building Surveyor, Waste Management Officer and Landscape Architects. These referrals indicated that the proposal was satisfactory to those officers subject to appropriate conditions.



### ITEM 3 (continued)

Although the proposal has been amended to address various design issues, the nature of the amendments did not require referral to these other officers, and appropriate conditions are included in the Draft Conditions of consent as recommended previously by these other internal referrals.

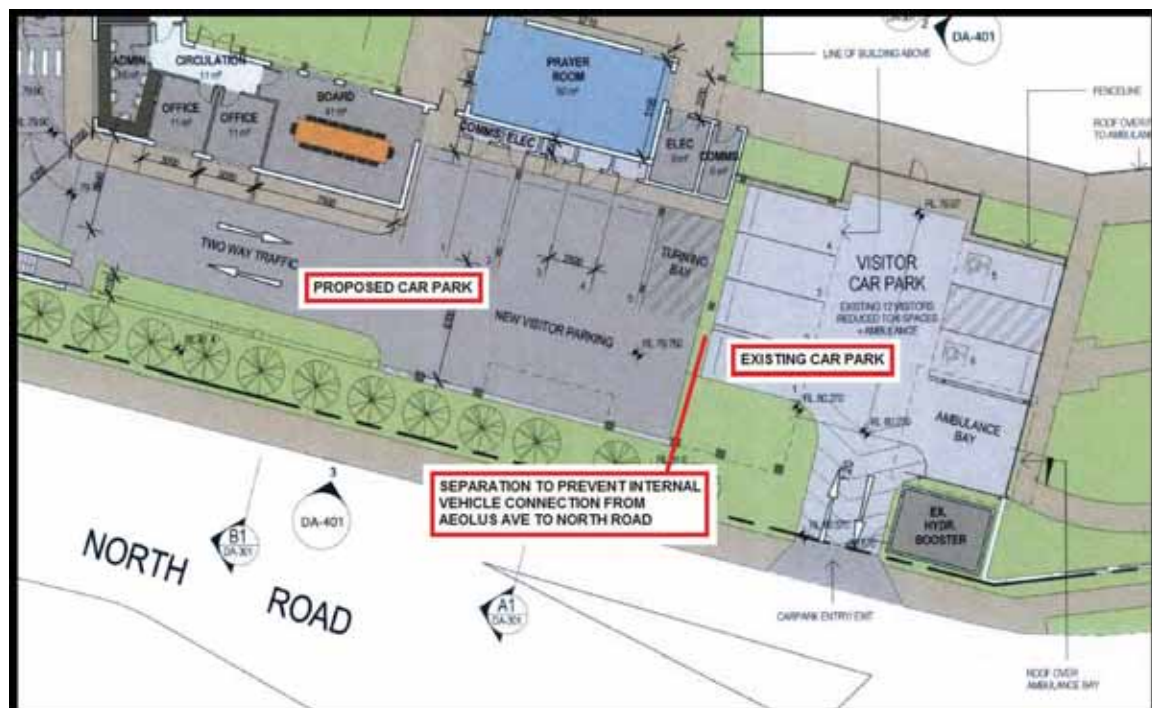
#### External Referrals:

**Roads and Maritime Services (RMS):** The amended plans were referred back to the RMS for comment, as the RMS had significant concerns regarding the original plans (regarding vehicle access and proximity to the North Road intersection), and given that the latest amended plans included substantial changes to the proposed access arrangements.

The RMS have provided the following further comments dated 16 August 2013 regarding the latest amended plans:

*RMS has reviewed the amended plan and notes there will be no changes proposed to the existing driveway on North Road. The amended plan shows that there will not be a vehicular connection between the North Road and Aeolus Avenue. There is an existing median on North Road to restrict vehicles to left in and left out movements only. RMS has no requirements for inclusion in Council's conditions of development consent.*

Assessment Officer's Comments: The latest amended plans have satisfied the concerns previously raised by the RMS, by providing a separation between the existing at-grade car park off North Road and the proposed new car park which is accessed off Aeolus Ave – see plan below:



**ITEM 3 (continued)****14. Critical Dates**

None relevant.

**15. Financial Impact**

Nil.

**16. Other Options**

None relevant.

**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 as a result of the amended plans, the development is now suitable for approval subject to conditions.

There were numerous issues of concern with regard to the original proposal, leading to Council deferring consideration of that proposal to enable the applicant to submit amended plans which address those issues of concern. These issues have been largely addressed via the amended plans submitted 28 June 2013.

Although the amended proposal still does not fully comply numerically with the SHSEPP requirements (in terms of height and landscaped area), it substantially addresses the issues of concern previously raised (as summarised above) and is considered to be a reasonable design outcome in the context of the site and surrounds. It is recommended that the DA be approved subject to conditions.

The issues of concern in the further submissions (following re-notification), although valid and reasonable, do not warrant refusal of the application or further design amendments, and can be addressed via conditions of consent.

The proposal is recommended for approval subject to conditions in Attachment 1 to this report.

**ITEM 3 (continued)**

**ATTACHMENT 1**

**DRAFT CONDITIONS OF CONSENT FOR LDA2012/247**

**GENERAL CONDITIONS**

The following conditions of consent included in this Part identify the requirements, terms and limitations imposed on this development.

1. **Approved Plans/Documents.** Except where otherwise provided in this consent, the development is to be carried out strictly in accordance with the following plans (stamped approved by Council) and support documents, and subject to the amendments required below the list of approved plans:

<b>Document Description</b>	<b>Date</b>	<b>Plan No/Reference</b>
Site Plan	27/6/2013	DA-101 Revision 4
Basement Plan	27/6/2013	DA-200 Revision 4
Lower Ground Plan	27/6/2013	DA-201 Revision 3
Ground Floor Plan	27/6/2013	DA-202 Revision 6
New Level 1 Plan	27/6/2013	DA-203 Revision 3
New Level 2 Plan	27/6/2013	DA-204 Revision 4
Plant Room	27/6/2013	DA-205 Revision 3
Sections Sheet 1	27/6/2013	DA-301 Revision 3
Elevations Sheet 1	27/6/2013	DA-401 Revision 4

Prior to the issue of a **Construction Certificate**, the following amendments shall be made:

- (a) The window to the first floor sitting room (eastern façade) shall be replaced with a “highlight” window with a minimum sill height of 1.5m.

The Development must be carried out in accordance with the amended plans approved under this condition.

2. **Building Code of Australia.** All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.

**Note:** Egress from the existing building/s is to be upgraded to comply with the performance requirements of the Building Code of Australia.

3. **Amended Landscaping Plan.** The submission of an amended landscaping plan and specifications with the **Construction Certificate** application, which includes the following details:

- (a) The 2m wide landscape strip adjacent to the eastern boundary shall be amended such that it extends to the southern end of the front building at No. 1 Aeolus Avenue, Ryde, with the passing bay relocated further southward;

**ITEM 3 (continued)**

**ATTACHMENT 1**

- (b) The 2m wide landscape strip adjacent to the eastern boundary shall be planted with a tree and a shrub layer, with the shrub layer to achieve a maturity height of 3m and the tree layer to achieve a maturity height of 8m from the Aeolus Avenue frontage to the southern edge of the first floor terrace off the sitting room and 12m for the remainder of the landscape strip;
  - (c) Species selection and planting spacing within the 2m wide landscape strip adjacent to the eastern boundary shall be made to ensure a continuous screening effect of the bulk of the proposed building as viewed from No. 1 Aeolus Avenue, Ryde; and
  - (d) A detailed specification shall be provided for the landscaping proposed in the 2m wide landscape strip adjacent to the eastern boundary, to include soil preparation, species choice and spacing and ongoing maintenance requirements (including replacement of dead plants) to ensure a continuous screening effect is achieved by the landscaping.
4. **Support for neighbouring buildings.** If the development involves excavation that extends below the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (a) Protect and support the adjoining premises from possible damage from the excavation, and
  - (b) Where necessary, underpin the adjoining premises to prevent any such damage, in accordance with relevant Australian Standards.

**Protection of Adjoining and Public Land**

5. **Hours of work.** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
6. **Hoardings.**
- (a) A hoarding or fence must be erected between the work site and any adjoining public place.
  - (b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.
7. **Illumination of public place.** Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
8. **Development to be within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.

**ITEM 3 (continued)**

**ATTACHMENT 1**

9. **Public space.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.

**Works on Public Road**

10. **Public Utilities.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RTA, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.
11. **Roads Act.** Any works performed in, on or over a public road pursuant to this consent must be carried out in accordance with this consent and with the Road Opening Permit issued by Council as required under section 139 of the Roads Act 1993.
12. **Alignment Levels.** The applicant is to apply to Council, pay the required fee, and have issued site specific alignment levels by Council prior to the issue of the **Construction Certificate**.
13. The residential areas of the building(s) must be designed and constructed so that road traffic noise levels inside the building(s) comply with the satisfactory design sound levels recommended in Australian/New Zealand Standard AS/NZS 2107: 2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*, when the windows and doors are closed.
14. All food handling areas (eg. café, kitchens and serveries) must comply with Food Safety Standard 3.2.3: *Food Premises and Equipment* and Australian Standard AS 4674 - 2004 *Design, construction and fit-out of food premises*.
15. **Waste Management Plan.** Compliance with the Waste Management Plan submitted with the DA.

Engineering Conditions

16. **Design and Construction Standards.** All engineering plans and work shall be carried out in accordance with the requirements as outlined within Council's publication *Environmental Standards Development Criteria* and relevant Development Control Plans except as amended by other conditions.
17. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.

**ITEM 3 (continued)**

**ATTACHMENT 1**

18. **Restoration.** Public areas must be maintained in a safe condition at all times. Restoration of disturbed road and footway areas for the purpose of connection to public utilities will be carried out by Council following submission of a permit application and payment of appropriate fees. Repairs of damage to any public stormwater drainage facility will be carried out by Council following receipt of payment. Restoration of any disused gutter crossings will be carried out by Council following receipt of the relevant payment.
19. **Footpath Paving Construction.** The applicant shall, at no cost to Council, construct standard concrete footpath paving across the frontage of the property. Levels of the footpath paving shall conform with levels issued by Council's Engineering Services Division.
20. **Vehicle Footpath Crossings.** Concrete footpath crossings shall be constructed at all locations where vehicles cross the footpath, to protect it from damage resulting from the vehicle traffic. The location, design and construction shall conform to the requirements of Council. Crossings are to be constructed in plain reinforced concrete and finished levels shall conform with property alignment levels issued by Council's Public Works Division. Kerbs shall not be returned to the alignment line. Bridge and pipe crossings will not be permitted.

**PRIOR TO CONSTRUCTION CERTIFICATE**

A Construction Certificate must be obtained from a Principal Certifying Authority to carry out the relevant building works approved under this consent. All conditions in this Section of the consent must be complied with before a Construction Certificate can be issued.

Council Officers can provide these services and further information can be obtained from Council's Customer Service Centre on 9952 8222.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with the conditions in this Section of the consent.

Details of compliance with the conditions, including plans, supporting documents or other written evidence must be submitted to the Principal Certifying Authority.

21. **Section 94.** A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council prior to the issue of any **Construction Certificate**:

**ITEM 3 (continued)**

**ATTACHMENT 1**

<b>A – Contribution Type</b>	<b>B – Contribution Amount</b>
Community & Cultural Facilities	Nil
Open Space & Recreation Facilities	Nil
Civic & Urban Improvements	\$66,628.51
Roads & Traffic Management Facilities	\$9,088.68
Cycleways	Nil
Stormwater Management Facilities	\$18,044.84
Plan Administration	\$1,530.91
<b>The total contribution is</b>	<b>\$95,292.94</b>

These are contributions under the provisions of Section 94 of the Environmental Planning and Assessment Act, 1979 as specified in Section 94 Development Contributions Plan 2007 (2010 Amendment) adopted by City of Ryde on 16 March 2011.

The above amounts are current at the date of this consent, and are subject to **quarterly** adjustment for inflation on the basis of the contribution rates that are applicable at time of payment. Such adjustment for inflation is by reference to the Consumer Price Index published by the Australian Bureau of Statistics (Catalogue No 5206.0) – and may result in contribution amounts that differ from those shown above.

A copy of the Section 94 Development Contributions Plan may be inspected at the Ryde Planning and Business Centre, 1 Pope Street Ryde (corner Pope and Devlin Streets, within Top Ryde City Shopping Centre) or on Council's website <http://www.ryde.nsw.gov.au>.

22. **Compliance with Australian Standards.** The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the **Construction Certificate**.
23. **Structural Certification.** The applicant must engage a qualified practising structural engineer to provide structural certification in accordance with relevant BCA requirements prior to the release of the **Construction Certificate**.
24. **Security deposit.** The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (category: other buildings with delivery of bricks or concrete or machine excavation)

**ITEM 3 (continued)**

**ATTACHMENT 1**

25. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:
- (a) Infrastructure Restoration and Administration Fee
  - (b) Enforcement Levy
26. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.
27. **Sydney Water – quick check.** The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre, prior to the release of the **Construction Certificate**, to determine whether the development will affect any Sydney Water assets, sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Building, Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water assets - see Building, Development and Plumbing then Building and Renovating.

Or telephone 13 20 92.

28. **Road opening permit – certification.** The Council must be provided with evidence that there has been compliance with all matters that are required by the Road Opening Permit issued by Council as required under section 139 of the Roads Act 1993 to be complied with prior to issue of the **Construction Certificate**.
29. **Reflectivity of materials.** Roofing and other external materials must be of low glare and reflectivity. Details of finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority prior to the release of the **Construction Certificate**.
30. **Lighting of common areas (driveways etc).** Details of lighting for internal driveways, visitor parking areas and the street frontage shall be submitted for approval prior to issue of the **Construction Certificate**. The details to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.
31. **Fire Safety Schedule.** A "Fire Safety Schedule" specifying the fire safety measures that are currently implemented in the building premises and the fire safety measures proposed or required to be implemented in the building premises as required by Clause 168 - Environmental Planning & Assessment Regulation 2000 are to be submitted and approved prior to the issue of the **Construction Certificate**.



**ITEM 3 (continued)**

**ATTACHMENT 1**

32. Details of all food handling areas must be submitted to and approved by Council before the issue of a **Construction Certificate**. Such details must include:
- (a) the layout and use of each room or area;
  - (b) the construction and finishes of all floors, walls and ceilings; and
  - (c) the location and details of all fixtures, fitting and equipment (including the method of installation).

The Principal Certifying Authority shall not issue a **Construction Certificate** until these details have been incorporated into the plans and specifications for that **Construction Certificate**.

33. The hairdressing salon must comply with any relevant standards set out in the *Local Government (General) Regulation 2005*. Details of the proposed shop fit-out must be submitted to Council or an accredited private certifier with the application for the **Construction Certificate**.
34. Details of all proposed mechanical ventilation systems, and alterations to any existing systems, must be submitted to Council or an accredited private certifier with the application for the **Construction Certificate**. Such details must include:
- (a) Plans (coloured to distinguish between new and existing work) and specifications of the mechanical ventilation systems;
  - (b) A site survey plan showing the location of all proposed air intakes exhaust outlets and cooling towers, and any existing cooling towers, air intakes, exhaust outlets and natural ventilation openings in the vicinity; and
  - (c) A certificate from a professional mechanical services engineer certifying that the mechanical ventilation systems will comply with the *Building Code of Australia* and setting out the basis on which the certificate is given and the extent to which the certifier has relied upon relevant specifications, rules, codes of practice or other publications.

Engineering Conditions

35. **Stormwater Management.** A detailed Stormwater Management Plan and Report must be submitted with the application for a Construction Certificate. The plans and documentation must be prepared by a suitably qualified and practising drainage engineer and comply with the following;
- The stormwater system must be generally in accordance with the concept plan and documentation prepared by Taylor Thomson Whitting Consulting Engineers (Refer to Job No. 121221 Rev P7 dated 8 August 2013).
  - All construction details and components of the system are in accordance with the City of Ryde, Development Control Plan 2006: - Part 8.2; Stormwater Management and Annexure.

**ITEM 3 (continued)**

**ATTACHMENT 1**

- The submitted design is consistent with the approved architectural and landscape plan and any revisions to these plans required by conditions of this consent.
- An onsite detention system must be incorporated in the design. The drainage engineer must provide written certification that the submitted design provides a total site discharge during the 100yr ARI equivalent to the pre-developed (pervious) state of the site and the onsite detention volume has been sized appropriately to accommodate stormwater runoff from the proposed development.

36. **Stormwater Management – Connection to Council Drainage System.** The proposed connection to Council's stormwater drainage infrastructure in Beihler Lane will require the assessment and approval of Council's Public Domain section in accordance with Section 138 of the Roads Act. Detailed plans and construction methodology are to be submitted to Council, for the approval of Council's Public Domain section prior to the issue of the Construction Certificate.

37. **Offstreet Parking.** To ensure safe and efficient vehicle access inside the site, the following amendments to the approved plans are required;

- The driveway adjoining the pedestrian access ramp on the northern frontage is inadequate to accommodate two-way traffic flows and sight distance from either end of this point is obscured. To minimise potential traffic conflicts, the No Parking (pickup/ dropoff layby area) fronting the entry foyer must be extended east, to provide a 5.5m wide trafficable carriageway adjoining the pedestrian access ramp.
- The No Parking zone fronting the entry foyer must be clearly marked as a No Parking zone, either by road linemarking or signposting, to ensure this area functions as intended.

All modifications to the parking area must comply with AS 2890.1. These revisions are to be incorporated in all plans to be submitted with the application for a Construction Certificate. All internal driveways, vehicle turning areas, garage opening widths and parking space dimensions shall comply with AS 2890.

38. **Boundary Levels.** The levels of the street alignment shall be obtained from Council. These levels shall be incorporated into the design of the internal driveway, carparking areas, landscaping and stormwater drainage plans and must be obtained prior to the issue of the construction certificate.

39. **Council Inspections.** A Council engineer must inspect the stormwater connection to the existing Council stormwater pipeline/ junction pit in Beihler Lane. Council shall be notified when the connection has been made to the pipe/ pit and an inspection must be made prior to the excavation being backfilled. An inspection fee in accordance with Council's adopted fee's and charges at the time of application shall be paid to Council prior to the issue of the Construction Certificate.

**ITEM 3 (continued)**

**ATTACHMENT 1**

40. **Dilapidation Report.** Submit a dilapidation report on the existing public infrastructure in 100m. radius of the proposed development. The report is to include a description of the location and nature of any existing observable defects to the following infrastructure including a photographic record.
- a) Road pavement
  - b) Kerb and gutter
  - c) Constructed footpath.
  - d) Drainage pits.
  - e) Traffic signs
  - f) Any other relevant infrastructure

The report is also to be submitted to Ryde Council prior to the issue of the construction certificate. The report shall be used by council as Roads Authority under the Roads Act to assess whether restoration works are required prior to the issue of the occupation certificate.

A second Dilapidation Report shall be prepared by a suitably qualified person at the completion of the works to ascertain if any structural damage has occurred to the items specified in the earlier report. A copy of the report shall be submitted to Ryde City Council

**PRIOR TO COMMENCEMENT OF CONSTRUCTION**

Prior to the commencement of any demolition, excavation, or building work the following conditions in this Part of the Consent must be satisfied, and all relevant requirements complied with at all times during the operation of this consent.

**41. Site Sign**

- (a) A sign must be erected in a prominent position on site, prior to the commencement of construction:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work,
  - (ii) showing the name of the principal contractor (if any) or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- (b) Any such sign must be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

42. **Residential building work – insurance.** In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

**ITEM 3 (continued)**

**ATTACHMENT 1**

43. **Residential building work – provision of information.** Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA has given the Council written notice of the following information:
- (a) in the case of work for which a principal contractor is required to be appointed:
    - (i) the name and licence number of the principal contractor; and
    - (ii) the name of the insurer by which the work is insured under Part 6 of that Act.
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder; and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If any of the above arrangements are changed while the work is in progress so that the information notified under this condition becomes out of date, further work must not be carried out unless the PCA for the development to which the work relates has given the Council written notice of the updated information (if Council is not the PCA).

**44. Excavation adjacent to adjoining land**

- (a) If an excavation extends below the level of the base of the footings of a building **or the finished level of any retaining wall structures** on an adjoining allotment of land, the person causing the excavation must, at their own expense, protect and support the adjoining premises from possible damage from the excavation, and where necessary, underpin the adjoining premises to prevent any such damage.
  - (b) The applicant must give at least seven (7) days notice to the adjoining owner(s) prior to excavating.
  - (c) An owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
45. **Safety fencing.** The site must be fenced prior to the commencement of construction, and throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

**ITEM 3 (continued)**  
Engineering Conditions

**ATTACHMENT 1**

46. **Road Opening Permit.** The applicant shall apply for a road-opening permit where a new pipeline is proposed to be constructed within or across the footpath. Additional road opening permits and fees may be necessary where there are connections to public utility services (e.g. telephone, electricity, sewer, water or gas) are required within the road reserve. No drainage work shall be carried out on the footpath without this permit being paid and a copy kept on the site.
47. **Sediment and Erosion Control.** The applicant shall install sediment and erosion control measures in accordance with the approved plan by Taylor Thomson Whitting Consulting Engineers (Refer to Job No. 121221 Rev P4 dated 8 August 2013) **prior** to any works being carried out on the site. Suitable erosion control management procedures must be practiced at all times throughout the construction. Where construction works deviate from the plan, soil erosion and sediment control measures are to be implemented. This condition is imposed in order to protect downstream properties, Council's drainage system and natural watercourses from sediment build-up transferred by stormwater runoff from the site.

**DURING CONSTRUCTION**

Unless otherwise specified, the following conditions in this Part of the consent must be complied with at all times during the construction period. Where applicable, the requirements under previous Parts of the consent must be implemented and maintained at all times during the construction period.

48. **Critical stage inspections.** The person having the benefit of this consent is required to notify the Principal Certifying Authority during construction to ensure that the critical stage inspections are undertaken, as required under clause 162A(4) of the *Environmental Planning and Assessment Regulation 2000*.
49. **Noise and vibration.** The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations.
50. **Construction noise.** The L<sub>10</sub> noise level measured for a period of not less than 15 minutes while demolition and construction work is in progress must not exceed the background noise level by more than 20 dB(A) at the nearest affected residential premises.
51. **Survey of footings/walls.** All footings and walls within 1 metre of a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report must be prepared indicating the position of external walls in relation to the boundaries of the allotment.

**ITEM 3 (continued)**

**ATTACHMENT 1**

52. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.
53. **Use of fill/excavated material.** Excavated material must not be reused on the property except as follows:
- (a) Fill is allowed under this consent;
  - (b) The material constitutes Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*;
  - (c) the material is reused only to the extent that fill is allowed by the consent.
54. **Construction materials.** All materials associated with construction must be retained within the site.
55. **Site Facilities**  
The following facilities must be provided on the site:
- (a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  - (b) a garbage receptacle for food scraps and papers, with a tight fitting lid.
56. **Site maintenance**  
The applicant must ensure that:
- (a) approved sediment and erosion control measures are installed and maintained during the construction period;
  - (b) building materials and equipment are stored wholly within the work site unless an approval to store them elsewhere is held;
  - (c) the site is clear of waste and debris at the completion of the works.
57. **Work within public road.** At all times work is being undertaken within a public road, adequate precautions shall be taken to warn, instruct and guide road users safely around the work site. Traffic control devices shall satisfy the minimum standards outlined in Australian Standard No. AS1742.3-1996 "Traffic Control Devices for Work on Roads".

**Plumbing and Drainage Work:**

58. All plumbing and drainage work must be carried out in accordance with the requirements of Sydney Water Corporation.
59. Condensation from refrigeration units and cool room motors must be discharged to sewer via a tundish installed in accordance with Sydney Water.
60. A grease trap must be installed if required by Sydney Water Corporation. The grease trap must be located outside the building or in a dedicated grease trap room and be readily accessible for servicing. Access through areas where exposed food is handled or stored or food contact equipment or packaging materials are handled or stored is not permitted.

**ITEM 3 (continued)**

**ATTACHMENT 1**

61. Any grease trap room must be constructed in accordance with the following requirements:
- (a) The floor, walls and ceiling must be constructed of solid materials finished to a smooth even impervious surface free of any cracks, holes or other openings that may allow the escape of odours.
  - (b) The room must be fitted with an air-tight (eg. coolroom type) door.
  - (c) The room must be provided with an approved system of mechanical exhaust ventilation.
  - (d) The room must be provided with intrinsically safe artificial lighting.
  - (e) A hose tap with a backflow prevention device must be provided in or adjacent to the room to facilitate cleaning.

**PRIOR TO OCCUPATION CERTIFICATE**

An Occupation Certificate must be obtained from a Principal Certifying Authority prior to commencement of occupation of any part of the development, or prior to the commencement of a change of use of a building.

Prior to issue, the Principal Certifying Authority must ensure that all works are completed in compliance with the approved construction certificate plans and all conditions of this Development Consent.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with conditions in this Part of the consent. Details to demonstrate compliance with all conditions, including plans, documentation, or other written evidence must be submitted to the Principal Certifying Authority.

62. **Restriction on occupation and Restriction as to User.** The completed development shall only be occupied by the following kinds of people:
- (a) Seniors or people who have a disability;
  - (b) People who live within the same household with seniors or people who have a disability;
  - (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

A restriction as to user shall 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 the approved accommodation to the kinds of people referred to above. Documentary evidence shall be provided to the Principal Certifying Authority prior to the approval of any **Occupation Certificate**.

63. **Fire Safety Certificates.** A Fire Safety Certificate/s from a suitably qualified person/s is to be submitted to Council or an accredited certifier (*and Council, if Council is not the PCA or an accredited certifier*) for all the essential services installed in the building in accordance with Clauses 170 and 171 of the Environmental Planning and Assessment Regulation 2000.

**ITEM 3 (continued)**

**ATTACHMENT 1**

64. **Landscaping.** All landscaping works approved by condition 1 are to be completed prior to the issue of the final **Occupation Certificate**.
65. **Road opening permit – compliance document.** The submission of documentary evidence to Council of compliance with all matters that are required by the Road Opening Permit issued by Council under Section 139 of the *Roads Act 1993* in relation to works approved by this consent, prior to the issue of the **Occupation Certificate**.
66. **Sydney Water – Section 73.** A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.

Following application a “Notice of Requirements” will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim/Final Occupation Certificate.

67. Council’s Environmental Health Officer must inspect and approve the completed fit-out before the issue of an **Occupation Certificate**.
68. Where any mechanical ventilation systems have been installed or altered, a certificate from a professional mechanical services engineer certifying that the systems comply with the approved plans and specifications must be submitted to the Principal Certifying Authority before the issue of an **Occupation Certificate**.

Engineering Conditions

69. **Compliance Certificates – Engineering.** To ensure that all engineering facets of the development have been designed and constructed to the appropriate standards, Compliance Certificates must be obtained for the following items and are to be submitted to the Accredited Certifier prior to the release of any Occupation Certificate:
  - Confirming that all vehicular footway and gutter (layback) crossings are constructed in accordance with the construction plan requirements and Ryde City Council’s *Environmental Standards Development Criteria - 1999*.



**ITEM 3 (continued)**

**ATTACHMENT 1**

- Confirming that the constructed internal car park and associated drainage complies with AS 2890, the construction plan requirements and Ryde City Council's *Environmental Standards Development Criteria – 1999*.
  - Confirming that the site drainage system (including the on-site detention storage system) servicing the development complies with the City of Ryde - Development Control Plan 2010: - Part 8.2; Stormwater Management and will function in accordance with the requirements of the conditions of consent relating to discharge of stormwater from the site.
  - Confirming that after completion of all construction work and landscaping, all areas adjacent the site, the site drainage system (including the on-site detention system), and the trunk drainage system immediately downstream of the subject site (next pit), have been cleaned of all sand, silt, old formwork, and other debris.
  - Confirming that the connection of the site drainage system to the trunk drainage system complies with Section 4.7 of *AS 3500.3 - 2003* (National Plumbing and Drainage Code).
70. **Work-as-Executed Plan.** A Work-as-Executed plan signed by a Registered Surveyor clearly showing the surveyor's name and the date, the stormwater drainage, including the on-site stormwater detention system if one has been constructed and finished ground levels **is to be submitted to the Accredited Certifier.**
71. **On-Site Stormwater Detention System - Marker Plate.** Each on-site detention system basin shall be indicated on the site by fixing a marker plate. This plate is to be of minimum size: 100mm x 75mm and is to be made from non-corrosive metal or 4mm thick laminated plastic. It is to be fixed in a prominent position to the nearest concrete or permanent surface or access grate. The wording on the marker plate is described in the City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management. An approved plate may be purchased from Council's Customer Service Centre on presentation of a completed City of Ryde OSD certification form.
72. **Positive Covenant, OSD.** The creation of a Positive Covenant under Section 88 of the Conveyancing Act 1919, burdening the property with the requirement to maintain the stormwater detention system on the property. The terms of the instruments are to be generally in accordance with the Council's draft terms of Section 88E instrument for Maintenance of Stormwater Detention Systems and to the satisfaction of Council.

**OPERATIONAL CONDITIONS**

The conditions in this Part of the consent relate to the on-going operation of the development and shall be complied with at all times.

**ITEM 3 (continued)**

**ATTACHMENT 1**

73. **Use of Level 1 Terrace.** The terrace at Level 1 (eastern side) shall only be used by residents and visitors during the hours of 8am and 8pm daily. Appropriate arrangements shall be made by staff to ensure that this terrace is not occupied at any time outside of these hours.
74. The operator must notify their business details to the NSW Food Authority before trading commences. Notifications may be lodged on-line at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au).
75. The operator of the business must register the premises with Council before trading commences.

**Waste Storage and Handling Facilities:**

76. An adequate number of suitable waste containers must be provided on the premises for the storage of all wastes generated on the premises between collections.
77. All garbage and recycling rooms must be constructed in accordance with the following requirements:
  - (a) The room must be of adequate dimensions to accommodate all waste containers, and any compaction equipment installed, and allow easy access to the containers and equipment for users and servicing purposes;
  - (b) The floor must be constructed of concrete finished to a smooth even surface, coved to a 25mm radius at the intersections with the walls and any exposed plinths, and graded to a floor waste connected to the sewerage system;
  - (c) The floor waste must be provided with a fixed screen in accordance with the requirements of Sydney Water Corporation;
  - (d) The walls must be constructed of brick, concrete blocks or similar solid material cement rendered to a smooth even surface and painted with a light coloured washable paint;
  - (e) The ceiling must be constructed of a rigid, smooth-faced, non-absorbent material and painted with a light coloured washable paint;
  - (f) The doors must be of adequate dimensions to allow easy access for servicing purposes and must be finished on the internal face with a smooth-faced impervious material;
  - (g) Any fixed equipment must be located clear of the walls and supported on a concrete plinth at least 75mm high or non-corrosive metal legs at least 150mm high;
  - (h) The room must be provided with adequate natural ventilation direct to the outside air or an approved system of mechanical ventilation;
  - (i) The room must be provided with adequate artificial lighting; and
  - (j) a hose with a trigger nozzle must be provided in or adjacent to the room to facilitate cleaning.

**ITEM 3 (continued)**

**ATTACHMENT 1**

**Waste Management:**

78. All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.
79. All waste storage areas must be maintained in a clean and tidy condition at all times.
80. The occupier must enter into an agreement with a licensed waste transporter for the collection and disposal of clinical wastes generated on the premises, and a copy of the service contract must be provided to Council on request.
81. Used sharps must be placed into a sharps container immediately after use. The container must comply with the requirements of Australian Standards AS 4031-1992 '*Non-reusable containers for the collection of sharp medical items used in health care areas*' or AS 4261-1994 '*Reusable containers for the collection of sharp medical items used in health care areas*' and be securely sealed with a lid before disposal.
82. All clinical wastes must be stored in a cool dry secure place until collected by the waste transporter.
83. Where necessary, suitable specialist contractors must be employed for the collection and disposal or processing of soiled nappies and associated articles.
84. All liquid wastes generated on the premises must be treated and discharged to the sewerage system in accordance with the requirements of Sydney Water Corporation or be transported to a liquid waste facility for recycling or disposal.
85. The applicant must contact the Wastewater Source Control Branch of Sydney Water Corporation on Tel. 13 11 10 to determine whether a Trade Waste Permit is required before discharging any trade wastewater to the sewerage system.
86. The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.
87. 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).

**ITEM 3 (continued)**

**ATTACHMENT 1**

- (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.
88. 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.

A report from a qualified acoustical consultant demonstrating compliance with the noise criteria specified in this consent must be submitted if requested by Council.

89. Council officers may carry out periodic inspections of the premises to ensure compliance with relevant environmental health standards and Council may charge an approved fee for this service in accordance with Section 608 of the *Local Government Act 1993*.

**End of consent**

ITEM 3 (continued)

ATTACHMENT 2



22 August, 2013

The General Manager  
Ryde City Council  
Locked Bag 2069  
North Ryde NSW 1670

ATTN: Mr. Chris Young

Dear Chris,

**RE: RESPONSE TO REQUEST FOR A SEPP 1 OBJECTION - LANDSCAPED AREA  
DEVELOPMENT APPLICATION LDA 2012/0247  
S'ANTONIO DA PADOVA VILLAGE, 305 BLAXLAND ROAD RYDE**

Further to your email of 20 August, 2013 to Mr. Sam Restifa of Restifa Partners, we have prepared an updated SEPP 1 objection regarding the non-compliance with the height control in the Seniors Housing SEPP (SLESEPP) relative to the amended plans lodged on 27 June 2013.

Your email also requested an updated SEPP 1 objection for those amended plans relative to the landscape supply controls in the SLSEPP. We note this matter has not previously been the subject of a SEPP 1 objection, and Council has not previously indicated such was necessary to allow for consideration of this element of the application.

It remains our opinion that the landscape control in Part 7 of the SLSEPP [clause 48(c)] is framed as a standard that cannot be used as grounds to refuse consent. If a proposal complies with the standards in Part 7 then Council must conclude that element of the DA is satisfactory. If a proposal does not satisfy those standards, adequate justification is to be provided. However that justification is not required to be in the form of a SEPP 1 objection as the standards in Part 7 are not controls that must be satisfied.

Nevertheless, in the event that Council holds a different view, and given that the amended plans provided on 27 June 2013 do not satisfy the landscape quantum in clause 48(c) of the SLSEPP, this submission requests a variation to that landscape control by means of clause 4.6 of Ryde LEP 2010/SEPP 1. In this regard we submit the following for Council's consideration:

- The amended plans lodged with Council on 27 June 2013 provide a landscape area of 2,552m<sup>2</sup>. The shortfall relative to clause 48(c) of the SLSEPP is only 98m<sup>2</sup>. (As lodged the landscape shortfall was 428m<sup>2</sup>);
- Our assessment of the adequacy, on merit, of the proposed landscape supply and its distribution across the site is provided in our letter dated 27 June, 2013;
- Although there is no specific objective nominated as underpinning the controls in Part 7 of the SLSEPP, the landscape supply achieved by the revised scheme is an increase on the original proposal of 330m<sup>2</sup>, and includes the addition of a large landscape strip adjacent to the eastern site boundary. These circumstances are consistent with the required urban design outcomes identified

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CITY PLAN STRATEGY & DEVELOPMENT PTY LTD ABN 58 133 601 774 CITY PLAN HERITAGE PTY LTD ABN 48 103 185 413

ITEM 3 (continued)

ATTACHMENT 2



by Council and the public submissions to ensure a satisfactory level of amenity for adjacent at No. 1 Aeolus Avenue;

- Noting the intended high quality landscape treatment as described on the plans by Arcadia Landscape Architecture; the specific functional requirements for the design and location of open space across the site as identified in the Statement of Environmental Effects and subsequent submissions; and given an absence of adverse environmental or urban design impacts from a landscape shortfall of 98m<sup>2</sup>, we consider that strict compliance with clause 48(c) is unreasonable or unnecessary in this instance;
- The technical non-compliance of 98m<sup>2</sup> allows for an orderly use of the land which is otherwise constrained by the local road pattern, distinct site topography, and limitations arising from the location and design of the present facility. Conversely strict compliance would hinder attainment of the objects in Section 5(a) of the Environmental Planning and Assessment Act, 1979;
- The non compliance does not raise any matter of state or regional significance; and
- 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, 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.

We consider this objection to strict compliance is well founded because the objectives and intent of the landscape provisions in Part 7 of SLSEPP are achieved notwithstanding a non-compliance of 98m<sup>2</sup> relative to that landscape supply.

Should you require any clarification of any matter within this submission please contact Brad Roeleven on 8270 3500.

Yours sincerely,

City Plan Strategy and Development Pty Ltd

A handwritten signature in black ink, appearing to read 'DR', is placed over a rectangular box.

**David Ryan**  
Executive Director

ITEM 3 (continued)

ATTACHMENT 3



24 July 2013

The General Manager  
City of Ryde Council  
Locked Bag 2069  
NORTH RYDE NSW 1670

Dear Sir/Madam,

**RE: EXTENSION OF AN EXISTING NURSING HOME TO INCREASE CAPACITY  
FROM 50 TO 106 BEDS - DEVELOPMENT APPLICATION NO. LDA2012/0247**

I refer to your letter of notification dated 3 July 2013 in relation to further amended plans lodged in response to Council's resolution to defer determination of the application subject to receipt of amended plans. I refer to my previous objection letters dated 18 September 2012 and 3 March 2013 for the above development application submitted on behalf of the body corporate of No. 1 Aeolus Avenue, Ryde. I remain retained by the body corporate to prepare a submission to Council in relation to the latest amended plans.

As stated previously, No. 1 Aeolus Avenue is the property immediately adjoining the subject site to the east (referred to throughout this submission as "my client's property") and is the only property that immediately adjoins the proposed extension, and such is the property most affected by the proposal.

I note that this set of amended plans has proposed more significant changes to the proposal, and on behalf of my clients, I acknowledge the improvement in the proposal in relation to how it impacts upon my client's property. I do, however, note that the changes do not go so far as to make the proposal compliant with the numerical controls applicable to the site and that the remaining variations sought, particularly in relation to the height and lack of landscape provision on site are still indicative of an overdevelopment of the site which results in detrimental impacts upon my client. It is therefore the position of the body corporate that the proposal should comply with the 8m height control and the minimum landscape provision control and the applicant should be requested to carry out further changes to achieve this aim. It is my opinion that such further changes would be consistent with Council's resolution in relation to this development.

Notwithstanding this position, should Council be of a mind to support the amended application as lodged I request the following conditions so as to reduce the remaining unacceptable impacts upon my client's property.

1. Replacement of first floor sitting room window in eastern façade with a highlight window
2. Replacement of Level 1 roof terrace with landscaped roof
3. Provision of detailed landscape/maintenance plan

Each requested condition is discussed following.

4 Keppel Avenue  
Concord NSW 2137  
Tel 02 9746 5514  
Email [kgps@birppond.net.au](mailto:kgps@birppond.net.au)  
ACN 099 386 544

**ITEM 3 (continued)**

**ATTACHMENT 3**

1. Replacement of first floor sitting room window in eastern façade with a highlight window

The proposed first floor sitting room is located such that it is opposite the living room/balcony of units in the front building on my client's property and is setback well under the 12m usually considered a reasonable privacy separation. The sitting room has two outlooks, one to the north where it is adjoined by a terrace and the second being the east facing window. As the room has another outlook which is north facing it is requested that a condition be placed upon any consent requiring the east facing window to be a highlight window. This would retain solar access and cross ventilation to the room whilst protecting the privacy of my client's property. A condition to give effect to this request is included for your consideration in the conclusion.

2. Replacement of Level 1 roof terrace with landscaped roof

Similarly, the first level terrace which is located to the north of the abovementioned sitting room is located in unacceptably close proximity to the front building on my client's building and opposite living rooms/balconies and bedrooms. The terrace in question, as it is accessed off a sitting room, has the potential to be used by multiple occupants and their visitors and as such has the potential to result in visual and acoustic privacy impacts upon my client's property. It is noted that a privacy screen is proposed to the terrace, but this screen will not assist acoustic privacy impacts as the units on my client's property are higher than the screen as can be seen in Section B2 of the plans. In order to maintain the acoustic amenity of my client's property it is therefore requested that this terrace be replaced with a roof garden similar to that now proposed over the loading dock. I note that the site contains several large private areas of open space for the residents of the complex and it is my opinion that the loss of this one terrace would not be significantly detrimental to the occupants, but would result in a significant improvement in acoustic amenity to the occupants of my client's property. A condition to give effect to this request is included for your consideration in the conclusion.

3. Provision of detailed landscape/maintenance plan

Whilst the proposal to provide a 2m wide landscape strip along the majority of the eastern boundary is supported, some concerns are raised with the location of the passing bay and the lack of appropriate detail. In this regard, it is requested that the passing bay be relocated slightly towards the rear of the property such that it not commence until past the end of the front building on my client's property (it being noted that currently it ends before the end of that building). This would provide for an improved outlook from my client's property and would not detrimentally impact the practical use of the passing bay.

Further, a 2m strip for landscaping is quite narrow and its efficacy in providing suitable visual amelioration of the bulk of the proposed development is totally reliant upon the provision of suitable planting and of its maintenance. No details have been provided in this regard as an amended landscape plan and specification have been provided for consideration. In order to achieve a suitable degree of visual "softening" of the bulk of the building it is considered necessary that landscaping be provided in the 2m strip to achieve two 'layers', being a tree and a shrub layer. The shrub layer would need to have a height at maturity of 3m and the tree layer a height at maturity of 8m (to the southern end of the terrace off the sitting room) and 12m to the south of that point.



**ITEM 3 (continued)**

**ATTACHMENT 3**

Such a level of landscaping would achieve appropriate amenity for both my client's property and from within the subject site, whilst not unacceptably impacting solar access to my client's property. Further, in order for such landscaping to succeed, given the narrowness of the garden bed, care would need to be taken in species selection, in preparation of the bed and in ongoing maintenance and as no detail is provided a condition to this effect would be appropriate. A condition to give effect to this request is included for your consideration in the conclusion.

Conclusion

Notwithstanding that the owners of No. 1 Aeolus Avenue, Ryde remain of the opinion that further amendments should be sought to ensure the proposal complies with the 8m height control and landscape control, should Council be of a mind to grant consent to the application it is requested that the following conditions be included to protect the amenity of their property.

**Privacy**

Amended plans shall be provided for approval with the Construction Certificate Application showing the following changes:

- a. Replacement of the first floor sitting room window in the eastern façade with a highlight window (minimum sill height of 1.5m above floor level); and
- b. Replacement of the level 1 terrace to the north of the first floor sitting room, located adjacent to the eastern boundary, with a landscaped roof similar to that over the loading dock.

**Reason:** To ensure the protection of the privacy of No. 1 Aeolus Avenue, Ryde.

**Landscape Plan**

Amended landscape plans/specifications are to be provided for approval with the Construction Certificate Application showing the following:

- a. The 2m wide landscape strip adjacent to the eastern boundary shall be amended such that it extends to the southern end of the front building at No. 1 Aeolus Avenue, Ryde, with the passing bay relocated further southward;
- b. The 2m wide landscape strip adjacent to the eastern boundary shall be planted with a tree and a shrub layer, with the shrub layer to achieve a maturity height of 3m and the tree layer to achieve a maturity height of 8m from the Aeolus Avenue frontage to the southern edge of the first floor terrace off the sitting room and 12m for the remainder of the landscape strip;
- c. Species selection and planting spacing within the 2m wide landscape strip adjacent to the eastern boundary shall be made to ensure a continuous screening effect of the bulk of the proposed building as viewed from No. 1 Aeolus Avenue, Ryde; and
- d. A detailed specification shall be provided for the landscaping proposed in the 2m wide landscape strip adjacent to the eastern boundary, to include soil preparation, species choice and spacing and ongoing maintenance requirements (including replacement of dead plants) to ensure a continuous screening effect is achieved by the landscaping.

**Reason:** To ensure the amenity of No. 1 Aeolus Avenue, Ryde is maintained.

**ITEM 3 (continued)**

**ATTACHMENT 3**

It is requested that I be informed of the date of any Council meeting at which this application is to be considered to allow me to address the Councillors on behalf of my clients. Thank you for considering the above concerns of my client. Should you wish to clarify any of the points contained in this submission please do not hesitate to call me.

Yours faithfully

**KERRY GORDON PLANNING SERVICES PTY LTD**



**Kerry Gordon  
BTP (Hon.), MLE  
Director**

ITEM 3 (continued)

ATTACHMENT 4



1 August, 2013

The General Manager  
Ryde City Council  
Locked Bag 2069  
North Ryde NSW 1670

ATTN: Mr. Chris Young

Dear Chris,

RE: RESPONSE TO SUBMISSIONS  
DEVELOPMENT APPLICATION LDA 2012/0247  
S'ANTONIO DA PADOVA VILLAGE, 305 BLAXLAND ROAD RYDE

As requested in your email of 25 July, 2013 to Mr. Sam Restifa of Restifa Partners, this letter responds to the matters raised in public submissions lodged with Council following notification of the amended plans provided to Council in June 2013. We note those amended plans are consistent with discussions at the meeting held with senior staff on 14 June, 2013.

Submission from KGPS on behalf of Nos. 1 and 3 Aeolus Avenue

This submission nominates various design amendments sought by the occupiers of the adjacent buildings. Our client's position on those suggested outcomes is confirmed below:

**Level 1 sitting room window**

Our client is agreeable to the window serving the Level 1 sitting room, in the eastern elevation of the building, being a 'highlight' window with a minimum sill height of 1.5m above floor level.

**Level 1 terrace**

As previously indicated, the design and operational considerations which have informed the location, configuration and treatment of the landscape and open space areas within the site are:

- Each level of the building must have direct access to a safe and usable open space area;
- It must be located immediately adjacent to living/dining rooms of each floor;
- The open space must have maximum amenity and be of a domestic scale; and
- It must have sufficient utility to provide maximum benefits to the residents.

The level 1 terrace, located immediately north of the quiet sitting room referred to above, fulfills that criteria by providing a small, protected outdoor sitting space. Within that context, the potential impacts from this terrace are overstated for the following reasons:

- This terrace is clearly a secondary external space, given its limited size and location;

LEVEL 1, 304 KENT STREET, SYDNEY NSW 2000 TEL: 82703500 FAX: 82700501 WWW.CITYPLAN.COM.AU  
CITY PLAN SERVICES PTY LTD ABN 30 075 223 383 CITY PLAN URBAN DESIGN PTY LTD ABN 41 107317 206  
CITY PLAN STRATEGY & DEVELOPMENT PTY LTD ABN 58 133 601 774 CITY PLAN HERITAGE PTY LTD ABN 46 103 185 413

ITEM 3 (continued)

ATTACHMENT 4



- The use of the terrace must be considered within the context of the nature of the building - a residential care facility providing 'ageing in place' accommodation for patients with dementia;
- In addition to being separated by 9m from No. 1 Aeolus Avenue, this small terrace is provided with a 1.8m solid screen for the entire length of its eastern edge, and the size of the balcony is further restricted by the provision of a planter box adjacent to that screen; and
- The 1.8m high screen sits on top of the planter box, and will therefore prevent any direct line of sight between a person on this terrace and a person on the balcony of Level 2 of No. 1 Aeolus Avenue.

For these reasons we consider that this terrace will not result in any adverse visual or acoustic privacy impacts for the adjacent building. Our client therefore does not agree to converting this terrace to a roof garden.

However to reinforce the intention that the function of this terrace is a quiet, passive area, our client is agreeable to a condition that would restrict the use of this particular terrace to between 8am and 8pm.

**Landscaping and passing bay along eastern boundary**

Our client is agreeable to:

- The location of the passing bay being altered as suggested, provided that this is also acceptable to Council's Traffic Engineer; and
- The preparation of a maintenance schedule for the ongoing management of the landscaping bed along the eastern site boundary.

To this end we consider that the suggested condition within the KGPS submission is reasonable, except for point 'b' which is simply too prescriptive. Point 'c' of that suggested condition is instead considered sufficient to achieve the desired outcome.

Submission from P. Keith, 270 Blaxland Road Ryde

This submission addresses issues relating to the presentation of the building to North Road. We do not believe those concerns are valid and therefore we have no further comments beyond those already stated within our prior submission of 27 June 2013.

We consider that the matters above, agreeable to our client, require only minor design amendments or supporting documentation which can reasonably form part of the Construction Certificate documentation.

Should you require any clarification of any matter within this submission please contact me on 8270 3500.

Yours faithfully,  
City Plan Strategy and Development Pty Ltd



**David Ryan, Executive Director**

ITEM 3 (continued)

ATTACHMENT 5



**ITEM 3 (continued)**

**ATTACHMENT 5**



**ITEM 3 (continued)**

**ATTACHMENT 7**

● Indicates submissions received to amended plans.



ITEM 3 (continued)

ATTACHMENT 9

- 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*

**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

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).

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Agenda of the Planning and Environment Committee Report No. 7/13, dated Tuesday 7 May 2013.



**ITEM 3 (continued)**

**ATTACHMENT 9**

**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.

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Agenda of the Planning and Environment Committee Report No. 7/13, dated Tuesday 7 May 2013.

**ITEM 3 (continued)**

**ATTACHMENT 9**

**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.

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Agenda of the Planning and Environment Committee Report No. 7/13, dated Tuesday 7 May 2013.

**ITEM 3 (continued)**

**ATTACHMENT 9**

**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;

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**ITEM 3 (continued)**

**ATTACHMENT 9**

**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

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Agenda of the Planning and Environment Committee Report No. 7/13, dated Tuesday 7 May 2013.

**ITEM 3 (continued)**

**ATTACHMENT 9**

**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

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Agenda of the Planning and Environment Committee Report No. 7/13, dated Tuesday 7 May 2013.

ITEM 3 (continued)

ATTACHMENT 9

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

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**ITEM 3 (continued)**

**ATTACHMENT 9**

**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:

Level	Scope of works
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.

Agenda of the Planning and Environment Committee Report No. 7/13, dated Tuesday 7 May 2013.

**ITEM 3 (continued)**

**ATTACHMENT 9**

**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;

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Agenda of the Planning and Environment Committee Report No. 7/13, dated Tuesday 7 May 2013.



ITEM 3 (continued)

ATTACHMENT 9

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 3 (continued)**

**ATTACHMENT 9**

**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.

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Agenda of the Planning and Environment Committee Report No. 7/13, dated Tuesday 7 May 2013.

**ITEM 3 (continued)**

**ATTACHMENT 9**

**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.

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Agenda of the Planning and Environment Committee Report No. 7/13, dated Tuesday 7 May 2013.

**ITEM 3 (continued)**

**ATTACHMENT 9**

**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 3 (continued)

ATTACHMENT 9

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.

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- *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.*

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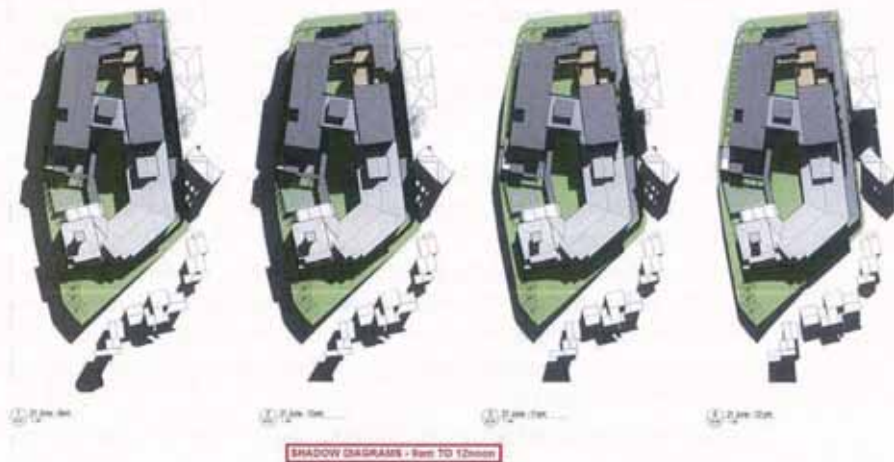
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Comment: The shadow diagrams (for the winter solstice 21 June) from the proposed development are provided below (and larger A3 sized plans are included in the Councillors Attachments package attached to this report). Given the orientation of the land, 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.

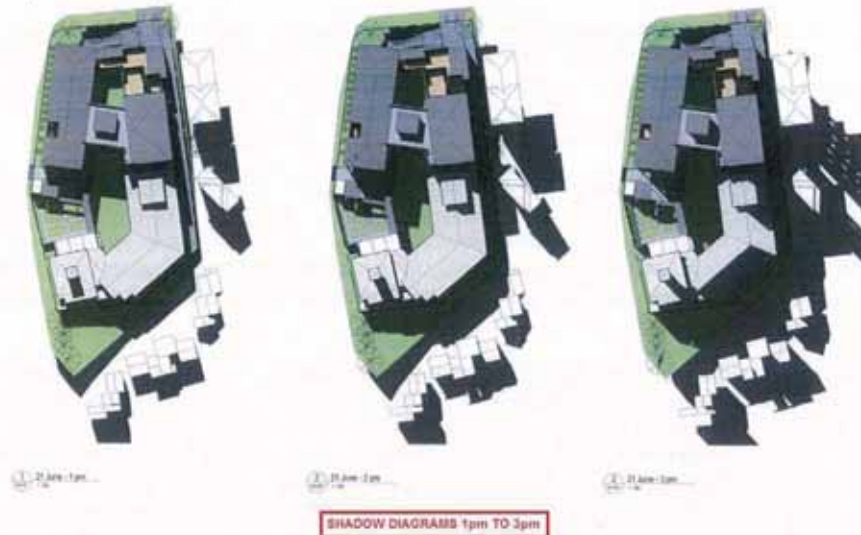


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**D. Loss of view/outlook.** Concerns are raised that the excessive height, bulk and scale of the development will cause unreasonable loss of outlook/views (ie district views, views of the sky etc), and the proposal fails to meet the view sharing principles 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*:

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*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.*

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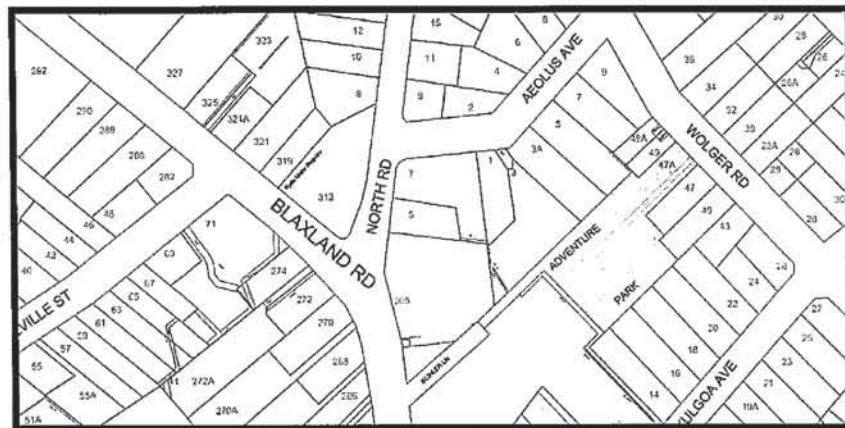
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Assessment Officer's Comment: The above views are obtained from those living area and bedroom windows, as well as balconies of the units facing west, and such views are available in either a standing or a sitting position (depending on the location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

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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.*

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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

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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.

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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.

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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.*

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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.



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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.

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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.

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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,

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- (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.

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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.*

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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 3 (continued)**

**ATTACHMENT 9**

**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

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**ITEM 3 (continued)**

**ATTACHMENT 9**

**ITEM 2 (continued)**

SEPP Provisions	Assessment	Comply
(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>

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**ITEM 3 (continued)**

**ATTACHMENT 9**

**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>	

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ITEM 2 (continued)

SEPP Provisions	Assessment	Comply
(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, & (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, & (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, &	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.	

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ITEM 3 (continued)

ATTACHMENT 9

ITEM 2 (continued)

SEPP Provisions	Assessment	Comply
(g) be designed so that no building is constructed in a riparian zone.	Not located in a riparian zone.	
<p>Cl. 34 Visual and acoustic privacy:</p> <p>The development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:</p> <p>(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, &amp;</p> <p>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>	<p>Issues of concern have been raised in submissions received from neighbours – as discussed in the Submissions section of this report.</p> <p>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.</p>	<p>See discussion below and in Submission s section of this report.</p>
<p>Cl. 35 Solar access and design for climate:</p> <p>The proposed development should:</p> <p>(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, &amp;</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</p>	<p>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 &amp; receive the required amount of sunlight. Most of the rooms face east or west thus receiving good sunlight.</p> <p>Resident's access to sunlight is maximised by the provision of a number of north facing terraces as well as common living areas.</p>	<p>Yes</p>

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**ITEM 3 (continued)**

**ATTACHMENT 9**

**ITEM 2 (continued)**

SEPP Provisions	Assessment	Comply
<p>CI.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>CI. 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>

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**ITEM 3 (continued)**

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**ITEM 2 (continued)**

SEPP Provisions	Assessment	Comply
(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.		
<p>Cl 38 Accessibility:</p> <p>The proposed development should:</p> <p>(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</p> <p>(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.</p>	<p>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 &amp; vehicle conflict.</p> <p>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.</p>	<p>Concerns re driveway access. See discussion below and in the Referrals Section of this report.</p>
<p>Cl.39 Waste management:</p> <p>The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities</p>	<p>Council Waste Officer indicates the proposed arrangements are satisfactory.</p>	<p>Yes</p>

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.

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**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.

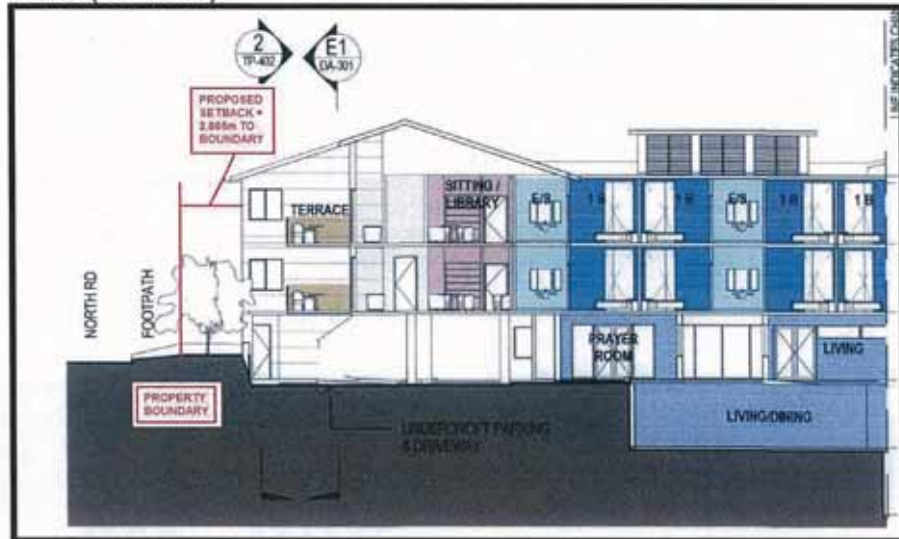
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Visual and Acoustic Privacy

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.

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**ITEM 3 (continued)**

**ATTACHMENT 9**

**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.

SEPP Provisions	Proposal	Comply
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

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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, <i>height</i> 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

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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).

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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;*

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**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;*

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**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.*

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*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-ridden 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-ridden 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'.*

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*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*

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*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.*

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*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.

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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*

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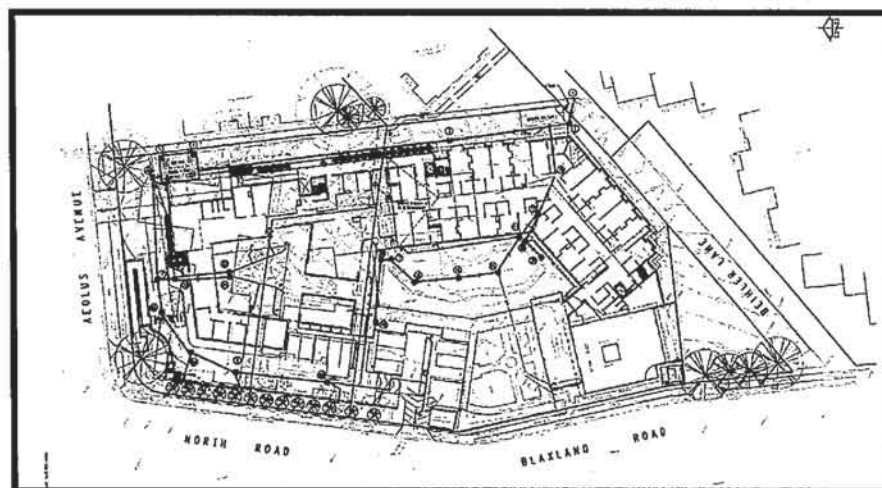
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*only do we have non-compliance with AS.2890.1:2004, we also have the issue of traffic build up on North Road and within the Visitor Spaces proposed and pedestrian and vehicle safety with the limited sight distance. It is also noted that the vehicular 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.



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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:*

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(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.*

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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;*

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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.

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**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.



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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.

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## **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.

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**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:

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- 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.

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- 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.

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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.**

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(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

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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.

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**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).

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- 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.

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**Acoustic issues**

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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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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>

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<b>Provision</b>	<b>Comments</b>	<b>Comply</b>
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>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>	
<b>2. Site Planning and Design</b>		
<b>Design principles &amp; better practice</b>		
<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>The design would provide a high level of amenity to internal residents.</p>	<b>Yes</b>
<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 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>	<b>No</b>

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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><b>No</b></p>

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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></p> <p>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>

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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. Concerns raised re amount of landscaping provided, which does not comply with SHSEPP requirement</p>	<p><b>No</b></p>



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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>

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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>	

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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>
<p><b>4. Impacts on Neighbours</b></p>		
<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:</li> <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>	<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>

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for example by: - incorporating them within the roof space and providing dormer windows - offsetting openings from existing neighbouring windows or doors. • Reduce the impact of unrelieved walls on narrow side and rear setbacks by limiting the length of the walls built to these setbacks.		
<b>Trees, landscaping and deep soil zones:</b> • Use vegetation and mature planting to provide a buffer between new and existing dwellings. • Locate deep soil zones where they will provide privacy between new and existing dwellings. • Planting in side and rear setbacks can provide privacy and shade for adjacent dwellings. • For new planting, if possible, use species that are characteristic of the local area.	Concerns are raised regarding the site landscaping, which does not comply with the minimum landscaped area prescribed in the SHSEPP.	<b>No</b>



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Provision	Comments	Comply
winter neighbouring dwellings. • Solar access to the private open space of neighbouring dwellings should not be unreasonably reduced.		
<b>5. Internal Site Amenity</b>		
<b>Built form:</b> <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, fences, 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> <b>Parking, garaging and vehicular circulation:</b> <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>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>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> <p>Yes</p>

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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>

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Provision	Comments	Comply
(including streets and driveways) - provides both paved and planted areas when located at ground level - retains existing vegetation where practical - uses pervious pavers where private open space is predominantly hard surfaced, to allow for water percolation and reduced runoff. • Provide communal open space that: - is clearly and easily accessible to all residents and easy to maintain - incorporates existing mature trees and vegetation to provide additional amenity for all residents - includes shared facilities such as seating areas and barbecues to permit resident interaction. • 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.		
<b>SEPP Controls</b>	These have been addressed elsewhere in the report	
<b>Rules of Thumb</b> • Separation of 1.2m should be achieved between habitable rooms and driveway or car parks of other dwellings: - this can be reduced if adequate screening is provided.	Design complies	Yes



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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

LEVEL 11, 111 MARKET STREET, SYDNEY NSW 2000 TEL: (02) 9550 6000 WWW.CITYOFRYDE.NSW.GOV.AU  
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Tuesday 7 May 2013.

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Agenda of the Planning and Environment Committee Report No. 14/13, dated  
Tuesday 17 September 2013.

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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 5.*

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*

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*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. (SLEPP)

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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.

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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 Aetelus 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

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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.

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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 locality'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*

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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



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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.

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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

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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: 12910-09 Antonio Da Padua Village N105 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.			

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 City of Ryde  
Lifestyle and opportunity  
@ your doorstep

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SITE AREA: 6456.5 m<sup>2</sup>  
SEE PLAN: REFERENCE  
REFER TO LANDSCAPE ARCHITECT'S DRAWING FOR LANDSCAPE DESIGN  
woodhead

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 City of Ryde  
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Architectural elevations of a building complex, including North, West (Helmers Ave), West (North Rd), and West elevations. Includes callouts and a scale bar labeled 'WOODFIELD'.

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