



Address: Nos. 37 - 43 Hay Street, Collaroy
Proposal: Seniors Housing Development
MARCH 2024

ADDENDUM STATEMENT OF ENVIRONMENTAL EFFECTS

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HAY STREET, COLLAROY

PROJECT INFORMATION

The Proposal: This Addendum Statement of Environmental Effects accompanies a development application lodged with consent of the registered property owners. The proposal seeks approval for demolition of the existing dwellings and construction of a seniors housing development comprising 10 x 3 bedroom independent living units over a basement level of car parking.

Site: Lots 43 – 46 Section 12 Deposited Plan 10648
Nos. 37 – 43 Hay Street
COLLARROY NSW 2097

Architect:

PopovBass

No. 208 Devonshire Street
SURRY HILLS NSW 2010



1 THE AMENDED PROPOSAL

The application seeks approval for seniors housing comprising 10 x 3 bedroom dwellings, including provision for 2 parking spaces per dwelling. Each master bedroom comprises a walk-in robe and ensuite. All dwellings comprise a large open plan kitchen, living and dining area that opens onto a paved terrace or balcony area, acting as an extension of the living space. Many of the dwellings comprise a 'flexi' space to provide flexibility to the future occupants to meet their individual needs.

The proposed development has also given consideration to the Seniors Living Policy – Urban Design Guidelines for Infill Development to ensure the design responds to both neighbourhood and streetscape character, and the opportunities and constraints afforded the site. The proposed colours and materials, including dark, earthy tones, and significant building articulation ensure the proposed development is consistent with the character of the locality. The proposed landscaping ensures the development is ensconced in the landscaped setting. The planning principle for compatibility in the urban environment was established in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191:

22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

23 It should be noted that compatibility between proposed and existing is not always desirable. There are situations where extreme differences in scale and appearance produce great urban design involving landmark buildings. There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing. Finally, there are urban environments that are so unattractive that it is best not to reproduce them.

24 Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.

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

25 The physical impacts, such as noise, overlooking, overshadowing and constraining development potential, can be assessed with relative objectivity. In contrast, to decide whether or not a new building appears to be in harmony with its surroundings is a more subjective task. Analysing the existing context and then testing the proposal against it can, however, reduce the degree of subjectivity.

*26 For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of cases), the character needs to be defined as part of a proposal's assessment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by **building height, setbacks and landscaping**. In special areas, such as conservation areas, **architectural style and materials** are also contributors to character.*

27 Buildings do not have to be the same height to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.

28 Front setbacks and the way they are treated are an important element of urban character. Where there is a uniform building line, even small differences can destroy the unity. Setbacks from side boundaries determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way.

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

30 Conservation areas are usually selected because they exhibit consistency of scale, style or material. In conservation areas, a higher level of similarity between the proposed and the existing is expected than elsewhere. The similarity may extend to architectural style expressed through roof form, fenestration and materials.

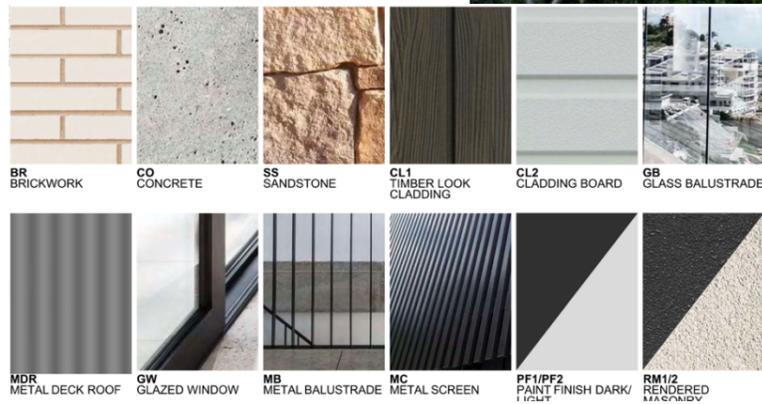
31 It should be remembered that most people are not trained planners or urban designers and experience the urban environment without applying the kind of analysis described above. As people move through the city, they respond intuitively to what they see around them. A photomontage of a proposed development in its context provides the opportunity to test the above analysis by viewing the proposal in the same way that a member of the public would.

In application of the above principles to this case, it is suggested that the proposal's physical impact on surrounding development is acceptable. The adjoining dwelling at No. 35 Hay Street, and at Nos. 985 – 993 Pittwater Road, continue to receive 3 hours of sunlight to living rooms and private open space, and any opportunity for overlooking of No. 35 Hay Street from the upper level of the proposed development has been mitigated through the orientation of rooms or the inclusion of screens. Privacy to the site's Pittwater Road neighbours is mitigated via separation and landscaping. The building height and setbacks are consistent with prescribed standards and controls.

I then turn to the question of visual compatibility with the streetscape and note the development is consistent with the established height of development on the low side of Hay Street, with the ground floor being approximately 2 metres below the footpath level, the setback being consistent with established development, and the landscaping proposed within the open front setback being compatible with the character of open front setbacks within the street. Private open spaces for the proposed dwellings are oriented towards the north and east. The scale of development does not exceed the maximum permissible building height prescribed by the SEPP, and is consistent with existing building heights evident within the street (and of the houses to be demolished – see dashed purple outlines on elevations of the existing dwellings).

The building materials, finishes and colours have been chosen to be compatible with the coastal character of development established within the locality.

Consistent with the test established in *Project Venture*, and given the significant level of articulation proposed to respect the established low density residential environment, it is reasonable to conclude that most observers would not find the proposed development offensive, jarring or unsympathetic to the established built form evident along Hay Street or Anzac Avenue.



ANZAC AVENUE PERSPECTIVE



HAY STREET PERSPECTIVE



FIGURES 1 – 3

Perspective images of the proposed development.

2 STATUTORY PLANNING FRAMEWORK

2.1 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Clause 4.6(1)(a) of State Environmental Planning Policy (Resilience and Hazards) 2021 states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. The Department of Planning publication “Managing Land Contamination – Planning Guidelines SEPP 55 – Remediation of Land” provides advice on the process of determination as to whether a site is contaminated. In this regard, Section 2.2 of the Guidelines states:

When carrying out planning functions under the EP & A Act, a planning authority must consider the possibility that a previous land use has caused contamination of the site as well as the potential risk to health or the environment from that contamination.

When an authority carries out a planning function, the history of the land use needs to be considered as an indicator of potential contamination. Where there is no reason to suspect contamination after acting substantially in accordance with these Guidelines, the proposal may be processed in the usual way.

The Guidelines continue at Section 3.2.1 by stating that:

The potential for contamination is often linked to past uses of land and a good early indicator of possible uses is land zoning. Contamination is more likely to have occurred if the land is currently, or was previously, zoned for industrial, agricultural or defence purposes.

The site has been used for residential purposes since the original subdivision was registered in 1921. Due to the site and its neighbours each being established for a prolonged period for residential use, there is no reason to suspect contamination by past land use activities and the application may be processed in the usual way.

2.2 STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

The NSW Housing Strategy: Housing 2041 is the NSW Government’s plan to meet the State’s housing needs over the next 20 years. State Environmental Planning Policy (Housing) 2021 (SEPP Housing) commenced on 26 November 2021 and supports this strategy by driving the development of affordable and diverse housing to meet the needs of our growing community. SEPP Housing gives incentives to supply affordable and diverse housing in the right places and for every stage of life.

Part 5 of SEPP Housing sets out the land use planning and assessment framework for seniors housing in NSW, and is applicable to land in the R2 Low Density Residential zone.

In determining a development application for development for the purposes of in-fill self-care housing, a consent authority must also consider the Seniors Living Policy: Urban Design Guideline for Infill Development, March 2004, published on the Department’s website. The SEPP’s relevant provisions are considered in **Table 1** over page.

TABLE 1

SEPP Housing Assessment Criteria.

SEPP (HOUSING) 2021 – PART 5 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY – ASSESSMENT CRITERIA				
CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE	
DIVISION 1 LAND TO WHICH THIS PART APPLIES				
79 Land to which Part applies	This Part applies to land in the following zones— (a) Zone RU5 Village, (b) Zone R1 General Residential, (c) Zone R2 Low Density Residential, (d) Zone R3 Medium Density Residential, (e) Zone R4 High Density Residential, (f) Zone B1 Neighbourhood Centre, (g) Zone B2 Local Centre, (h) Zone B3 Commercial Core, (i) Zone B4 Mixed Use, (j) Zone B5 Business Development, (k) Zone B6 Enterprise Corridor, (l) Zone B7 Business Park, (m) Zone B8 Metropolitan Centre, (n) Zone SP1 Special Purposes, (o) Zone SP2 Infrastructure, (p) Zone RE2 Private Recreation.	Complies. The site is zoned R2 Low Density Residential.	YES	
80 Land to which Part does not apply—general	(1) This Part does not apply to the following land— (a) land to which Warringah Local Environmental Plan 2000 applies that is located within locality B2 (Oxford Falls Valley) or C8 (Belrose North) under the Plan, (b) land described in Schedule 3. (2) Nothing in Schedule 3 operates to preclude the application of this Part to land only because— (a) the land is identified under State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2, or (b) in relation to land used for the purposes of an existing registered club—the land is described in another environmental planning instrument as— (i) private open space, or (ii) open space where dwellings or dwelling houses are permitted.	N/A. N/A. The site is not identified as environmentally sensitive land. N/A. N/A.	N/A N/A N/A N/A	
81 Seniors housing permitted with consent	Development for the purposes of seniors housing may be carried out with development consent— (a) on land to which this Part applies, or (b) on land on which development for the purposes of seniors housing is permitted under another environmental planning instrument.	Complies. N/A.	YES N/A	

SEPP (HOUSING) 2021 – PART 5 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY – ASSESSMENT CRITERIA			
CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE
DIVISION 2 PRELIMINARY			
82 Definitions	<p>In this Part—</p> <p>gross floor area means the sum of the areas of each floor of a building, where the area of each floor is taken to be the area within the inner face of the external enclosing walls, as measured at a height of 1.4m above each floor level—</p> <p>(a) excluding columns, fin walls, sun control devices and elements, projections or works outside the general lines of the inner face of the external wall, and</p> <p>(b) excluding cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts, and</p> <p>(c) excluding—</p> <p>(i) car parking needed to meet the requirements of this Part or the council of the local government area in which the development is located, and</p> <p>(ii) internal access to the car parking, and</p> <p>(d) excluding space for the loading and unloading of goods, including access to the space, and</p> <p>(e) for in-fill self-care housing—including car parking provided at ground level, other than for visitors, in excess of 1 per dwelling, and</p> <p>(f) for a residential care facility—excluding floor space used for service activities provided by the facility below ground level (existing).</p> <p>hostel means residential accommodation for seniors or people with a disability where—</p> <p>(a) meals, laundering, cleaning and other facilities are provided on a shared basis, and</p> <p>(b) at least 1 staff member is available on site 24 hours a day to provide management services.</p> <p>in-fill self-care housing means seniors housing consisting of at least 2 independent living units and at which none of the following services are provided on the site—</p> <p>(a) meals,</p> <p>(b) cleaning services,</p> <p>(c) personal care,</p> <p>(d) nursing care.</p> <p>prescribed zone means a zone specified in section 79.</p> <p>seniors means the following people—</p> <p>(a) people who are at least 60 years of age,</p> <p>(b) people who are resident at a facility at which residential care, within the meaning of the Aged Care Act 1997 of the Commonwealth, is provided,</p> <p>(c) people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.</p> <p>serviced self-care housing means seniors housing comprising independent living units where the following services are available on the site—</p> <p>(a) meals,</p> <p>(b) cleaning services,</p> <p>(c) personal care,</p> <p>(d) nursing care.</p>	Noted.	
83 Amendments to the bush fire evacuation risk map	<p>(1) The Planning Secretary may prepare maps for the purposes of amending or replacing the Bush Fire Evacuation Risk Map.</p> <p>(2) In preparing a map, the Planning Secretary must consider the following matters—</p> <p>(a) the size of the existing population within the locality,</p> <p>(b) age groups within the population and the number of persons within the age groups,</p>	Noted.	

SEPP (HOUSING) 2021 – PART 5 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY – ASSESSMENT CRITERIA			
CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE
	(c) the number of hospitals and other facilities, including the number of beds, providing care to the residents of the facilities within the locality,		
	(d) the number of schools within the locality and the number of students at the schools,		
	(e) existing development within the locality that has been carried out under this Part,		
	(f) recommendations, if any, made by the NSW Rural Fire Service.		
DIVISION 3 DEVELOPMENT STANDARDS			
84 Development standards—general	(1) This section applies to development for the purposes of seniors housing involving the erection of a building.	Noted.	
	(2) Development consent must not be granted for development to which this section applies unless—		
	(a) the site area of the development is at least 1,000m ² , and	Complies. The site area is 2,839.1m ² .	YES
	(b) the frontage of the site area of the development is at least 20m measured at the building line, and	Complies. The site comprises 2 frontages, each greater than 20 metres.	YES
	(c) for development on land in a residential zone where residential flat buildings are not permitted—		
	(i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and	Complies. The maximum building height proposed is 8.69 metres.	YES
	(ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and	Complies.	YES
	(iii) if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.	Complies (see various Sections).	YES
	(3) The servicing equipment must—		
	(a) be fully integrated into the design of the roof or contained and suitably screened from view from public places, and	Complies.	YES
	(b) be limited to an area of no more than 20% of the surface area of the roof, and	Complies.	YES
	(c) not result in the building having a height of more than 11.5m.	Complies.	YES
	(4) Subsection (2)(a) and (b) do not apply to development the subject of a development application made by the following—	N/A. Application is not being made by the Aboriginal Housing Office, LHC or another social housing provider.	N/A
	(a) the Aboriginal Housing Office or the Land and Housing Corporation,		
	(b) another social housing provider.		
85 Development standards for hostels and independent living units	1) Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.	Complies. An assessment against schedule 4 has been undertaken by the access consultant. See Access Report.	YES
	(2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in	N/A. Application is not being made by, or jointly with a social housing provider.	N/A

SEPP (HOUSING) 2021 – PART 5 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY – ASSESSMENT CRITERIA			
CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE
	Schedule 4, sections 2, 7–13 and 15–20 if the development application is made by, or by a person jointly with, a social housing provider. Note—Development standards concerning accessibility and usability for residential care facilities are not specified in this Policy. For relevant standards, see the Building Code of Australia.		
86 Development standards for seniors housing—Zones RE2, SP1, SP2 and RU5	<p>(1) Development consent must not be granted for development for the purposes of seniors housing unless the consent authority is satisfied as follows—</p> <p>(a) for development on land in Zone RE2 Private Recreation—</p> <p>(i) the development is carried out on land used for the purposes of an existing registered club, and</p> <p>(ii) the land adjoins land in a prescribed zone,</p> <p>(b) for development on land in Zone SP1 Special Purpose or Zone SP2 Infrastructure—</p> <p>(i) development for the purposes of a place of public worship, an educational establishment, a hospital or seniors housing is permitted on the land, and</p> <p>(ii) the land adjoins land in a prescribed zone,</p> <p>(c) for development on land in Zone RU5 Village—</p> <p>(i) the development is carried out on land within 50km of a 24-hour health services facility, and</p> <p>(ii) the land is serviced by reticulated water and sewerage.</p> <p>(d) (Repealed)</p> <p>(2) Nothing in this section prevents a consent authority from granting development consent for development for the purposes of seniors housing on land on which development for the purposes of seniors housing is permitted under another environmental planning instrument.</p> <p>(3) (Repealed)</p>	N/A. The site is located in an R2 Low Density Residential Zone.	N/A
87 Additional floor space ratios	<p>(1) This section applies to development for the purposes of seniors housing on land to which this Part applies if—</p> <p>(a) development for the purposes of a residential flat building or shop top housing is permitted on the land under another environmental planning instrument, or</p> <p>(b) the development is carried out on land in Zone B3 Commercial Core.</p> <p>(2) Development consent may be granted for development to which this section applies if—</p> <p>(a) the site area of the development is at least 1,500m², and</p> <p>(b) the development will result in a building with the maximum permissible floor space ratio plus—</p> <p>(i) for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or</p>	N/A. N/A. N/A.	N/A N/A N/A

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CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE
	(ii) for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or		
	(iii) for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and		
	(c) the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.		
88 Restrictions on occupation of seniors housing	(1) Development permitted under this Part may be carried out for the accommodation of only the following—	Noted.	
	(a) seniors or people who have a disability,	Able to comply.	YES
	(b) people who live in the same household with seniors or people who have a disability,	Able to comply.	YES
	(c) staff employed to assist in the administration and provision of services to housing provided under this Part.	Able to comply.	YES
	(2) Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people referred to in subsection (1) will occupy accommodation to which the development relates.	Able to comply.	YES
89 Use of ground floor of seniors housing in business zones	(1) This section applies to a building used for the purposes of seniors housing on land in a business zone.	N/A.	N/A
	(2) Development consent must not be granted for development under this Part unless the part of the ground floor of the building that fronts a street will not be used for residential purposes.		
	(3) Subsection (2) does not apply to a part of a building that—		
	(a) faces a service lane that does not require active street frontages, or		
	(b) is used for 1 or more of the following purposes—		
	(i) a lobby for a residential, serviced apartment, hotel or tenanted component of the building,		
	(ii) access for fire services,		
	(iii) vehicular access.		
	(4) Subsection (2) does not apply if another environmental planning instrument permits the use of the ground floor of the building for residential purposes.		
90 Subdivision	(1) Development consent may be granted for the subdivision of land on which development has been carried out under this Part.	Noted.	
	(2) Development consent must not be granted for the subdivision of a building resulting from development carried out under this Part on land in Zone B3 Commercial Core.	N/A.	N/A
91 Fire sprinkler systems in residential care facilities	(1) A consent authority must not grant consent for development for the purposes of a residential care facility unless the facility will include a fire sprinkler system.	Able to comply.	YES

SEPP (HOUSING) 2021 – PART 5 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY – ASSESSMENT CRITERIA			
CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE
	(c) the gradient along the pathway complies with subsection (4)(c).	Complies. See Transport Impact Assessment and Access Report.	YES
	(4) In subsection (3)—		
	(a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and	Complies. See Access Report.	YES
	(b) the distance is to be measured by reference to the length of the pathway, and	Complies. See Access Report.	YES
	(c) the overall average gradient must be not more than 1:14 and the gradients along the pathway must be not more than—	Complies. See Access Report.	YES
	(i) 1:12 for a maximum length of 15m at a time, or		
	(ii) 1:10 for a maximum length of 5m at a time, or		
	(iii) 1:8 for a maximum length of 1.5m at a time.		
	(5) In this section—		
	facilities and services means—		
	(a) shops and other retail and commercial services that residents may reasonably require, and		
	(b) community services and recreation facilities, and		
	(c) the practice of a general medical practitioner.		
	provide a booking service has the same meaning as in the Point to Point Transport (Taxis and Hire Vehicles) Act 2016, section 7.		
	Note—		
	Provide a booking service is defined as carrying on a business taking bookings for taxis or hire vehicles to provide passenger services, whether immediately or at a later time, and communicating the bookings to drivers for passenger services or providers of passenger services.		
94 Location and access to facilities and services— residential care facilities	(1) Development consent must not be granted for development for the purposes of a residential care facility unless the consent authority is satisfied that residents of the facility will have access to facilities and services—	N/A.	N/A
	(a) on-site, or		
	(b) by a transport service other than a passenger service.		
	(2) In this section—		
	facilities and services—see section 93.		
	passenger service has the same meaning as in the Point to Point Transport (Taxis and Hire Vehicles) Act 2016.		
	Note—A passenger service is defined as the transport, by a motor vehicle other than a bus, of passengers within, or partly within, this State for a fare.		
95 Water and sewer	(1) A consent authority must not consent to development under this Part unless the consent authority is satisfied the seniors housing will—		

SEPP (HOUSING) 2021 – PART 5 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY – ASSESSMENT CRITERIA			
CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE
	(a) be connected to a reticulated water system, and	Complies.	YES
	(b) have adequate facilities for the removal or disposal of sewage.	Complies.	YES
	(2) If the water and sewerage services will be provided by a person other than the consent authority, the consent authority—		
	(a) must consider the suitability of the site in relation to the availability of reticulated water and sewerage infrastructure, or	Able to comply.	YES
	(b) if reticulated services are not available—must satisfy the relevant authority that the provision of water and sewerage infrastructure, including environmental and operational considerations, is satisfactory for the development.	N/A.	N/A
	(3) In this section— relevant authority means the public authority responsible for water and sewerage services in the area in which the seniors housing is located.	Noted.	
96 Bush fire prone land	(1) A consent authority must not consent to development under this Part on bush fire prone land unless the consent authority is satisfied the development complies with the requirements of Planning for Bushfire Protection.	N/A.	N/A
	(2) In determining a development application for development under this Part on land near bush fire prone land, the consent authority must—		
	(a) consult with the NSW Rural Fire Service and consider its comments, and		
	(b) consider the following including—		
	(i) the location of the development,		
	(ii) the means of access to and egress from the location,		
	(iii) the size of the existing population within the area,		
	(iv) age groups within the population and the number of persons within the age groups,		
	(v) the number of hospitals and other facilities providing care to the residents of the facilities within the area, and the number of beds within the hospitals and facilities,		
	(vi) the number of schools within the area and the number of students at the schools,		
	(vii) existing seniors housing within the area,		
	(viii) the road network within the area and the capacity of the road network to cater for traffic to and from existing development if there were a need to evacuate persons from the area in the event of a bush fire,		
	(ix) the adequacy of access to and from the site of the development for emergency response vehicles,		
	(x) the nature, extent and adequacy of bush fire emergency procedures that can be applied to the development and its site,		
	(xi) the requirements of Fire and Rescue NSW.		
	(3) In this section— bush fire prone land means land identified on a bush fire prone land map, certified under the Act, section 10.3, as the following—		

SEPP (HOUSING) 2021 – PART 5 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY – ASSESSMENT CRITERIA

CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE
	<p>(a) "Bush fire prone land—vegetation category 1", (b) "Bush fire prone land—vegetation category 2", (c) "Bush fire prone land—vegetation category 3", (d) "Bush fire prone land—vegetation buffer".</p> <p>Planning for Bushfire Protection means the document titled Planning for Bush Fire Protection (ISBN 978 0 646 99126 9) prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, Industry and Environment, dated November 2019.</p>		
DIVISION 5 DESIGN REQUIREMENTS			
97 Design of in-fill self-care housing	In determining a development application for development for the purposes of in-fill self-care housing, a consent authority must consider the Seniors Living Policy: Urban Design Guideline for Infill Development, March 2004.	The Seniors Living Policy: Urban Design Guideline for Infill Development has been considered in design of the proposal.	YES
98 Design of seniors housing	A consent authority must not consent to development for the purposes of seniors housing unless the consent authority is satisfied that the design of the seniors housing demonstrates adequate consideration has been given to the principles set out in Division 6.	Complies.	YES
DIVISION 6 DESIGN PRINCIPLES			
99 Neighbourhood amenity and streetscape	Seniors housing should be designed to—		
	(a) recognise the operational, functional and economic requirements of residential care facilities, which typically require a different building shape from other residential accommodation, and	N/A.	N/A
	(b) recognise the desirable elements of—		
	(i) the location's current character, or		
	(ii) for precincts undergoing a transition—the future character of the location so new buildings contribute to the quality and identity of the area, and	Complies. The proposed development is compatible with the character of the existing streetscape and reflects a high standard of architectural design that is consistent with the quality of development established in the site's immediate context.	YES
	(c) complement heritage conservation areas and heritage items in the area, and	N/A. The site is not located in a heritage conservation area, nor is it located in proximity to a heritage item.	N/A
	(d) maintain reasonable neighbourhood amenity and appropriate residential character by—		
	(i) providing building setbacks to reduce bulk and overshadowing, and		
	(ii) using building form and siting that relates to the site's land form, and		
	(iii) adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and		
	(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and	Complies. The proposed development maintains solar access to adjoining sites and will not unreasonably overshadow neighbours. The proposed building height is compatible in scale with the built form on adjoining sites.	YES
	(e) set back the front building on the site generally in line with the existing building line, and	Complies. The development is generally setback greater than 6.5 metres to both Anzac Avenue and Hay Street, compatible with the pattern of established front setbacks within these streets.	YES
	(f) include plants reasonably similar to other plants in the street, and	Complies. See Landscape Plan.	YES
	(g) retain, wherever reasonable, significant trees, and	Complies. See Arboricultural Impact Assessment.	YES
	(h) prevent the construction of a building in a riparian zone.	N/A. The site is not identified as containing any riparian land.	YES

SEPP (HOUSING) 2021 – PART 5 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY – ASSESSMENT CRITERIA				
CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE	
100 Visual and acoustic privacy	Seniors housing should be designed to consider the visual and acoustic privacy of adjacent neighbours and residents by—	Complies.	YES	
	(a) using appropriate site planning, including considering the location and design of windows and balconies, the use of screening devices and landscaping, and	Complies. Upper level windows / balconies are screened or highlighted where they face a side boundary.	YES	
	(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	Complies.	YES	
101 Solar access and design for climate	The design of seniors housing should—			
	(a) for development involving the erection of a new building—provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and	Complies. 9 of the 10 units proposed receive solar access as required by the SEPP. The proposed development does not significantly impact upon the solar access of adjoining properties. See Sun's Eye diagrams in architectural plans that illustrate the residential flat development to the site's north continues to receive 2 hours of sunlight to the living room windows/balconies at mid winter.	YES	
102 Stormwater	(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.	Complies.	YES	
	The design of seniors housing should aim to—			
103 Crime prevention	(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and	Complies.	YES	
	(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.	Complies.	YES	
104 Accessibility	Seniors housing should—			
	(a) be designed in accordance with environmental design principles relating to crime prevention, and	Complies.	YES	
	(b) provide personal property security for residents and visitors, and	Complies.	YES	
	(c) encourage crime prevention by—	Complies.	YES	
	(i) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins the area, driveway or street, and	Complies.	YES	
	(ii) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and	Complies.	YES	
105 Waste management	(iii) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	Complies.	YES	
	Seniors housing should—			
104 Accessibility	(a) have obvious and safe pedestrian links from the site that provide access to transport services or local facilities, and	Complies. See Access Report.	YES	
	(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.	Complies. See Access Report and Traffic Impact Assessment.	YES	
105 Waste management	Seniors housing should include waste facilities that maximise recycling by the provision of appropriate facilities.	Complies. See Waste Management Plan.	YES	

SEPP (HOUSING) 2021 – PART 5 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY – ASSESSMENT CRITERIA			
CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE
DIVISION 7 NON-DISCRETIONARY DEVELOPMENT STANDARDS			
106 Interrelationship of Division with design principles in Division 6	Nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the design of the seniors housing does not demonstrate that adequate consideration has been given to the principles set out in Division 6.	Noted.	
107 Non-discretionary development standards for hostels and residential care facilities—the Act, s 4.15	<p>(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of hostels and residential care facilities that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p> <p>(2) The following are non-discretionary development standards in relation to development for the purposes of hostels or residential care facilities—</p> <p>(a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,</p> <p>(b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—</p> <p>(i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and</p> <p>(ii) is limited to an area of no more than 20% of the surface area of the roof, and</p> <p>(iii) does not result in the building having a height of more than 11.5m,</p> <p>(c) the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,</p> <p>(d) internal and external communal open spaces with a total area of at least—</p> <p>(i) for a hostel—8m² for every bed, or</p> <p>(ii) for a residential care facility—10m² for every bed,</p> <p>(e) at least 15m² of landscaped area for every bed,</p> <p>(f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 6m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,</p> <p>(g) for a hostel—at least 1 parking space for every 10 beds in the hostel,</p> <p>(h) for a residential care facility—at least 1 parking space for every 15 beds in the facility,</p> <p>(i) at least 1 parking space for every 2 employees who are on duty at the same time,</p> <p>(j) at least 1 parking space for the purpose of ambulance parking.</p>	N/A. The proposed development is not for a hostel or residential care facility.	N/A
108 Non-discretionary development standards for independent living units—the Act, s 4.15	<p>(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p> <p>(2) The following are non-discretionary development standards in relation to development for the purposes of independent living units—</p>	Noted.	

SEPP (HOUSING) 2021 – PART 5 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY – ASSESSMENT CRITERIA

CONTROL	REQUIREMENTS	PROPOSED	COMPLIANCE
	(a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,	Complies. The proposed maximum building height is 8.69 metres.	YES
	(b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—	Complies.	YES
	(i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and	Complies.	YES
	(ii) is limited to an area of no more than 20% of the surface area of the roof, and	Complies.	YES
	(iii) does not result in the building having a height of more than 11.5m,	Complies.	YES
	(c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,	The proposed FSR is 0.55:1. Despite this, the proposed development has been designed by a skillful architect, is consistent with the building envelope controls established by the DCP, and is compatible with the scale of development in the area. See Clause 4.6 Variation request.	NO
	(d) for a development application made by a social housing provider—at least 35m ² of landscaped area per dwelling,	N/A. The application is not being made by a social housing provider.	N/A
	(e) if paragraph (d) does not apply—at least 30% of the site area is landscaped,	Complies. 1,160.24m ² of the site area is landscaped (49%).	YES
	(f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,	Complies. 879.47m ² of the site area is deep soil (31%). 422.94m ² of this deep soil is located within the rear of the site.	YES
	(g) at least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,	Complies. 9 of the 10 dwellings receive 2 hours of solar access at mid winter (90%).	YES
	(h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building—		
	(i) at least 15m ² of private open space per dwelling, and	Complies.	YES
	(ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor,	Complies.	YES
	Note—The open space needs to be accessible only by a continuous accessible path of travel, within the meaning of AS 1428.1, if the dwelling itself is an accessible one—see Schedule 4, section 2.		
	(i) for a dwelling in a multi-storey building not located on the ground floor—a balcony accessible from a living area with minimum dimensions of 2m and—	Complies.	YES
	(i) an area of at least 10m ² , or	Complies.	YES
	(ii) for each dwelling containing 1 bedroom—an area of at least 6m ² ,	N/A.	N/A
	(j) for a development application made by, or made by a person jointly with, a social housing provider—at least 1 parking space for every 5 dwellings,	N/A.	N/A
	(k) if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom.	Complies. 2 parking spaces are provided for each dwelling, and provision also made for 2 x dedicated visitor car parking spaces.	YES

2.3 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX – BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 was gazetted on 1 July 2004 and created the requirement for a state wide building sustainability index, which seeks to encourage sustainable residential development. This policy aims to ensure consistency in the implementation of the BASIX scheme throughout the State. In accordance with the requirements of this SEPP, each application for residential development must be accompanied by a list of commitments made by the applicant as to the manner in which the development will be carried out, to become conditional upon the development consent. A BASIX Certificate accompanies this application and has been prepared in accordance with the legislation.

2.4 WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

Warringah Local Environmental Plan 2011 (the LEP) applies to all land within the former Warringah local government area (LGA). The particular aims of the LEP are to:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to create a land use framework for controlling development in Warringah that allows detailed provisions to be made in any development control plan made by the Council,*
- (b) *to recognise the role of Dee Why and Brookvale as the major centres and employment areas for the sub-region,*
- (c) *to maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,*
- (d) *in relation to residential development, to—*
 - (i) *protect and enhance the residential use and amenity of existing residential environments, and*
 - (ii) *promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and*
 - (iii) *increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,*
- (e) *in relation to non-residential development, to—*
 - (i) *ensure that non-residential development does not have an adverse effect on the amenity of residential properties and public places, and*
 - (ii) *maintain a diversity of employment, services, cultural and recreational facilities,*
- (f) *in relation to environmental quality, to—*
 - (i) *achieve development outcomes of quality urban design, and*
 - (ii) *encourage development that demonstrates efficient and sustainable use of energy and resources, and*
 - (iii) *achieve land use relationships that promote the efficient use of infrastructure, and*
 - (iv) *ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and*
 - (v) *protect, conserve and manage biodiversity and the natural environment, and*
 - (vi) *manage environmental constraints to development including acid sulfate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,*
- (g) *in relation to environmental heritage, to recognise, protect and conserve items and areas of natural, indigenous and built heritage that contribute to the environmental and cultural heritage of Warringah,*
- (h) *in relation to community well-being, to—*
 - (i) *ensure good management of public assets and promote opportunities for social, cultural and community activities, and*
 - (ii) *ensure that the social and economic effects of development are appropriate.*

Land Use Zone

The site is zoned R2 Low Density Residential Zone. The objectives of the zone are:

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

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed Seniors Housing development is permissible with consent within the R2 Low Density Residential zone via application of SEPP Housing and satisfies the objectives of the zone, as the development provides for the housing needs of the community, by increasing the availability and variety of dwellings to enable population growth, and is compatible with the established low density residential environment. The proposed landscaping will ensure the development's setting is in harmony with the natural environment.

Clause 4.3 – Building Height

Clause 4.3 of the LEP prescribes a maximum building height of 8.5 metres. However, SEPP Housing prescribes a maximum building height for seniors housing of 9.5 metres. Where there is an inconsistency between SEPP Housing and another environmental planning instrument, the SEPP prevails to the extent of the inconsistency.

The development proposes a building height of 8.69 metres which is compliant with the applicable 9.5 metre development standard.

Clause 4.4 – Floor Space Ratio

Clause 4.4 of the LEP does not prescribe a maximum floor space ratio.

Clause 4.6 – Exceptions to Development Standards

The proposal seeks to vary Clause 108(2)(c) of State Environmental Planning Policy (Housing) 2021 which establishes a non-discretionary development standard for floor space ratio.

Clause 4.6 of the Warringah Local Environmental Plan 2011 provides a consent authority the ability to provide an exception to a prescribed development standard. The objectives of this provision are:

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

Comment: Pursuant to Section 4.15(2)(b) of the EPAA, if an environmental planning instrument contains non-discretionary development standard and a development complies with those standards, the consent authority must not refuse an application on the ground the development does not comply with that standard.

However, if an environmental planning instrument contains a non-discretionary development standard and a development application does not comply with those standards, a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied (i.e. Clause 4.6 of the LEP). Pursuant to Section 4.15(3)(a) of the EPAA, the discretion of the consent authority is not limited in its determination of the application, thus providing flexibility to the consent authority in its consideration of the proposal's merits.

The site is not subject to a maximum floor space ratio development standard as might otherwise be prescribed at Clause 4.4 of the LEP. The 'density' of development in the locality is managed by a combination of the building height standard and built form controls established by the Warringah Development Control Plan 2011 (the DCP) in relation to a development's permitted building envelope.

Clause 4.3 of the LEP prescribes a maximum building height of 8.5 metres. However, SEPP Housing prescribes a maximum building height for seniors housing of 9.5 metres. Where there is an inconsistency between SEPP Housing and another environmental planning instrument, the SEPP prevails to the extent of the inconsistency. The development proposes a building height of 8.69 metres which is compliant with the applicable 9.5 metre development standard.

The DCP provides various setback and building envelope controls that otherwise constrain the bulk and scale of development in a locality. The proposed development is consistent with the front, side and rear boundary setback controls, and is also consistent with the side boundary envelope controls. The objectives of the DCP's side boundary envelope controls are to ensure that development does not become visually dominant by virtue of its height and bulk, to ensure adequate light, solar access and privacy by providing spatial separation between buildings, and to ensure that development responds to the topography of the site. Despite the increased building height permitted on the site by SEPP Housing, the proposed development is compliant with the DCP side boundary envelope controls as demonstrated at **Figures 4 and 5** below.



FIGURES 4 & 5

Demonstration of the development's compliance with the building height (SEPP) and building setback and side boundary envelope (DCP) controls.

The objectives of the DCP's side boundary setback controls include to ensure that development does not become visually dominant and to ensure that the scale and bulk of buildings is minimised. The objectives of the rear setback control is to maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements. The proposed development is compliant with each of these controls.

The proposed development is contained within a building envelope that is otherwise considered appropriate for development within the R2 Low Density Residential zone and it is suggested a degree of flexibility should be applied in 'application' of the non-discretionary development standard as an upper limit to development, where the SEPP's principle aims of encouraging the development of housing that will meet the needs of seniors and people with a disability, and ensuring new housing development provides residents with a reasonable level of amenity without adversely impacting the amenity of neighbouring properties, will be attained. The form of seniors housing proposed is not the 'same' as dwelling houses located upon adjoining lots. However, as the development is demonstrated to comply with prescribed building height, envelope and landscaping controls, it is suggested that such buildings can exist together in harmony without having the same density, scale or appearance, and that a better outcome for and from development can be achieved by allowing flexibility in this particular circumstance.

Application of the non-discretionary development standard (0.5:1) as an upper limit to development would necessitate a reduction in floor space ratio (FSR) in circumstances where the development is otherwise demonstrated to be consistent with the LEP's objectives related in application of an FSR standard (see further below), and it is further suggested a reduction in FSR would be contrary to Section 1.3(c) of the EPAA as it would not promote the orderly and economic use and development of land, consistent with the principle aims of SEPP Housing which include to encourage the development of housing that will meet the needs of seniors and people with a disability.

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment: The non-discretionary development standard is Clause 108(2)(c) of State Environmental Planning Policy (Housing) 2021. The prescribed non-discretionary limit to FSR is 0.5:1. The proposed FSR is 0.55:1, which represents a 10% variation to the development standard. The object of this provision is simply to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

The non-discretionary development standard is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: This submission is a written request for consideration by the consent authority.

The proposed development has been designed with a high level of skill, and the built form has been highly articulated to fit into its surroundings.

'Compliance' with the non-discretionary standard is considered unreasonable and unnecessary in the circumstance of this case, given the numerical non-compliance is with a non-discretionary development standard, the objective of which is to identify development standards for independent living units that, if complied with, prevent the consent authority from requiring a more onerous standard. Is not intended as an upper limit to development, and the Council does not otherwise prescribe a maximum FSR standard for development in this locality.

There are otherwise sufficient environmental planning grounds to justify contravening the standard, including the fact the proposed development is contained wholly within a building envelope that is considered appropriate for development within the locality, and deemed appropriate for development within the R2 Low Density Residential zone. The development is demonstrated to comply with prescribed building height, setback, side boundary envelope and landscaping controls prescribed by the SEPP and DCP.

The proposed floor space has been distributed across the site in a highly articulated and modulated 2 and 3 storey stepped building form which appropriately addresses each of its Hay Street and Anzac Avenue frontages.

As a result of compliance with the maximum building height, building envelope for 3 storey developments and landscaping standards prescribed by the SEPP, and development controls relating to building setbacks and side building envelopes established by the DCP, the extent of 'non-compliance' it is not visually intrusive, will not cause impact upon views from any adjoining property, will not impact privacy, and will not cause adverse overshadowing impacts upon any adjoining property.

The form and massing of the building is therefore demonstrated to be consistent with the desired future character of the immediate area as reflected by compliance with the appropriate building height and envelope controls. The contextually responsive development is consistent with the zone objectives and the objectives of the FSR development standard prescribed by the LEP. For these reasons, compliance with the standard is unreasonable and/or unnecessary.

The responsiveness of the development to the site's topography, the exceptional design quality, the appropriateness of selected building materials, textures and colours in responding to the site's context, amenity of the building's residents, maintenance of amenity for neighbouring residents, and the site's consistency with the desired future character of the locality, are all environmental planning grounds that justify a departure from the FSR development standard.

(4) *Development consent must not be granted for development that contravenes a development standard unless—*

(a) *the consent authority is satisfied that—*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Planning Secretary has been obtained.*

Comment: The site is zoned R2 Low Density Residential. The objectives of the zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed development is consistent with the stated objectives of the zone as it provides for the diverse housing needs of the community, and through responsiveness of the design, is compatible with the established low density residential environment, which is characterised by development within an open landscaped setting. The proposed building setbacks and significant deep soil zones provided at the periphery of the site, combined with a high standard of landscaping will ensure the development is consistent with established 1 – 3 storey development evident within the streetscape.

The object of the non-discretionary development standards for independent living units at Clause 108 of SEPP Housing is to identify standards for independent living units that, if complied with, prevent the consent authority from requiring more onerous standards. There are however no objectives provided for individual standards for consideration by the consent authority when a development application does not comply with those standards.

However, it is suggested the objectives of Clause 4.4 of the LEP in relation to FSR provide implicit objectives for Clause 108(2)(c). Consideration of the objectives of the FSR standard at Clause 4.4(1) of the LEP are reproduced as follows:

(a) *to limit the intensity of development and associated traffic generation so that they are commensurate with the capacity of existing and planned infrastructure, including transport infrastructure,*

Comment: The Traffic Impact Assessment relates that standard engineering practice is to determine the traffic activity associated with the proposal with reference to the 'TfNSW Guide to Traffic Generation Developments' (the Guide). The RMS Technical Direction for traffic, safety and transport practitioners updates Section 3 of the RMS Guide which was originally published in October 2002, and classifies seniors housing as 'housing for aged and disabled persons' and specifies the following traffic generation rates:

Daily vehicle trips = 2.1 per dwelling
Peak hour vehicle trips = 0.4 per dwelling

Application of the above trip generation rates to the proposed development of 10 new dwellings results in approximately 4 vehicle trips during both morning and evening peak hour. The level of traffic generated by the proposed development is therefore concluded to have no adverse effect on any nearby intersections and can be readily accommodated within the existing road network, with minimal impact in terms of traffic flow efficiency and road safety considerations.

(b) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,

Comment: Towards 2040 has been prepared in accordance with the requirements of Section 3.9 of the Environmental Planning and Assessment Act 1979. It is intended to inform the development of Council's new Local Environmental Plan (LEP) and Development Control Plan (DCP), broader Council policies and strategies, and the assessment of planning proposals for changes to Council's planning controls. It is relevant in the consideration of this application as it reflects local values and aspirations. It includes planning priorities that guide local land use planning and principles that underpin planning priorities and actions. As a priority, it seeks an inclusive, healthy, safe and socially connected community, and seeks to locate seniors housing, social and affordable housing near centres and high-frequency public transport.

The Northern Beach Local Housing Strategy was subsequently adopted and seeks 'to tackle affordability and provide options for more people by planning for the right diversity of housing that will allow more people to be able to afford to live in the Northern Beaches', including through the provision of seniors housing:

We will encourage seniors housing in accessible locations, enable the industry trend of the 'continuum of care' approach on larger sites, and provide incentives for seniors housing that meets the needs of the community.

There is an identified demand for an additional 1,716 self-contained retirement village units ('standard' housing generally targeted to over 55s), 502 assisted living units (with some support facilities) and 765 nursing home beds (offering end of life care) by 2036.

The Strategy seeks to 'incentivise the provision of seniors housing in the right locations'.

The proposal is consistent with these various priorities and objectives, providing much needed seniors accommodation near an existing centre with high-frequency public transport available upon Pittwater Road. The proposed development is also demonstrated to be compatible with the established housing stock in the locality by virtue of its compliance with building envelope controls applied to housing in the locality.

(c) to ensure that buildings, by virtue of their bulk and scale, are consistent with the desired character of the locality,

Comment: It is suggested the proposal's physical impact on surrounding development, relating to its bulk and scale, are acceptable. The adjoining dwelling at No. 35 Hay Street continues to receive 3 hours of sunlight to its rear facing living rooms and private open space, and any opportunity for overlooking this property from the upper level of the proposed development has been mitigated through the orientation of rooms or the inclusion of screens. Similarly, the shadow diagrams and sun's eye diagrams illustrate there are negligible impacts on the established dwellings at Nos. 985 – 993 Pittwater Road at mid winter, with the building's 'rear' setback being in excess of 10 metres.

The building height and setbacks are consistent with prescribed standards and controls. In relation to visual compatibility of the bulk and scale of the intended development with the streetscape, it is suggested the development is consistent with the established height of development on the low side of Hay Street, with the ground floor being 1 – 2 metres below the footpath level, its setback being consistent with established development, and the landscaping proposed within the front setback also being compatible with the character of open front setbacks within the street, as private open spaces are oriented towards the north and east.

The scale of development does not exceed the maximum permissible building height prescribed by the SEPP, and is consistent with existing building heights evident within the street (and of the houses to be demolished – see dashed purple outlines on elevations of the existing dwellings). The building materials, finishes and colours have each been chosen to be compatible with the coastal character of development established within the locality.

(d) to manage the visual impact of development when viewed from public spaces,

Comment: The proposed development is not visually significant. Perspective images of the development have been prepared, consistent with the test established in Project Venture, which assist in demonstrating that it is reasonable to conclude that most observers would not find the proposed development offensive, jarring or unsympathetic to the established built form on Hay Street or Anzac Avenue.

(e) to maximise solar access and amenity for public areas.

Comment: The proposed development does not adversely impact solar access and amenity of any public place, and has a negligible impact on the footpath along Hay Street only at 9am at mid winter.

SEPP Housing seeks to enable development of diverse housing types by encouraging development that will meet the needs of seniors and people with a disability, and by promoting the delivery of housing in locations where it will make good use of existing and planned infrastructure and services. Northern Beaches Council through its principle environmental planning instrument does not prescribe a maximum floor space ratio for development. The 'density' of development in this locality is managed by controls established by the DCP relating setback and building envelope controls, the objectives of which include to 'ensure that development does not become visually dominant by virtue of its height and bulk'.

The proposed development is consistent with each of these controls, and for this reason, it is suggested the proposed development will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives for development within the zone in which the development is proposed to be carried out.

A better planning outcome is achieved by not rigidly applying the non-discretionary development standard as an upper limit to development in the circumstances, as application of the non-discretionary development standard as an upper limit would necessitate a significant reduction in the FSR in circumstances where the development is otherwise demonstrated to be consistent with the LEP's objectives related in application of an FSR standard. It is further suggested a reduction in FSR would be contrary to Section 1.3(c) of the EPAA, as it would not promote the orderly and economic use and development of land, consistent with the principle aims of SEPP Housing, which include to encourage the development of housing that will meet the needs of seniors and people with a disability.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Comment: The contravention raises no matters of State or regional significance. It is considered the proposal is compatible with existing development and is consistent with the desired future character of development in the locality. There is no public benefit in application of the non-discretionary standard as an upper limit to development in the circumstances given a better planning outcome achieved, including the delivery of much needed seniors housing. No other matters are required to be taken into consideration by the Director-General.

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Comment: The proposal is not for contravention of a subdivision control.

(7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

Comment: The consent authority will keep a record of the determination.

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*

- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,*
- (ba) *clause 4.4, to the extent that it applies to land identified on the [Key Sites Map](#) as Site F, Site G, Site H or Site I,*
- (c) *clause 5.4,*
- (caa) *clause 5.5.*
- (d) *(Repealed)*

Comment: The proposal is not for complying development. The development standard does not arise from the regulations in connection with BASIX. The standard does not arise from Clause 5.4 or any of the other exclusions listed.

(8A) *Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the Height of Buildings Map on land shown on the Centres Map as the Dee Why Town Centre.*

Comment: The site is no located within the Dee Why Town Centre

(8B) Despite subclause (8A), development on Site C or Site E may exceed the maximum height of building shown on the Height of Buildings Map if the maximum height is allowable under clause 7.14.

Comment: The site is not located on Site C or E.

Clause 5.10 – Heritage Conservation

Clause 5.10 of the LEP relates to heritage conservation. The site does not contain a heritage item, nor does it adjoin an item of heritage significance. The site is not located within a heritage conservation area.

Clause 6.2 – Earthworks

Clause 6.2 of the LEP establishes the objectives of ensuring that earthworks for which development consent is required will not have a detrimental impact on existing drainage patterns and soil stability in the locality and it is noted the proposed development is considered suitable for the site. A geotechnical report has been prepared in support of this application and concludes the following in relation to the suitability of the site:

The stratigraphy at the site is characterized by topsoil/fill and sand with residual sandy clay overlying sandstone bedrock. Observations taken during the investigation have been used to produce a stratigraphic model of the site.

No groundwater seepage was observed in BH1, BH2 or BH4. Seepage was observed in BH3 at 1.6 mBGL and is inferred to be seepage at approximately the rock/soil boundary in response to surface water infiltration following recent rainfall events.

There was no adverse finding following these investigations and suitable recommendations are provided for construction.

3 SECTION 4.15 OF THE EPAA

3.1 ENVIRONMENTAL PLANNING INSTRUMENTS – SECTION 4.15(1)(a)(i)

The proposal is permissible within the R2 Low Density Residential zone subject to the provisions of SEPP (Housing). The impacts of other environmental planning instruments including SEPP (Resilience and Hazards) and SEPP (BASIX) have also been considered in the preparation of the development application.

3.2 DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS – SECTION 4.15(1)(a)(ii)

Nil.

3.3 DEVELOPMENT CONTROL PLANS

Warringah Development Control Plan 2011

The Warringah Development Control Plan 2011 (the DCP) came into effect on 9 December 2011 and applies to land to which the Warringah LEP applies. The DCP has undergone several amendments since adoption, most recently 1 June 2022. The objectives of the DCP are extracted below:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood*
- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome*
- *To inspire design innovation for residential, commercial and industrial development*
- *To provide a high level of access to and within development.*
- *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained*
- *To achieve environmentally, economically and socially sustainable development for the community of Warringah*

The specific sections which relate to the site and the proposed seniors housing development have been discussed in detail below.

B1 Wall Heights

This part of the DCP applies to land zoned R2 Low Density Residential with an 8.5 metre maximum building height prescribed by the LEP. The control establishes that walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space). The objectives of this control are:

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*
- *To ensure development is generally beneath the existing tree canopy level.*
- *To provide a reasonable sharing of views to and from public and private properties.*
- *To minimise the impact of development on adjoining or nearby properties.*
- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*
- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

The proposed development is for seniors housing which is subject to a maximum building height of 9.5 metres pursuant to the operation Clause 84(2)(c)(i) of SEPP Housing. The proposed development complies with the maximum building height and with Clause 84(2)(c)(iii) that requires application of an additional building envelope to ensure that any element considered to constitute a 3rd storey, is adequately setback from the edges of the built form to ensure impacts on adjoining properties is minimised (see Sections BB and DD).

The 9.5 metre maximum building height is a non-discretionary development standard for independent living units prescribed at Clause 108(2)(a) of SEPP Housing. The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Side Boundary Envelope, Side Boundary Setbacks, Front Boundary Setbacks and Rear Boundary Setbacks

Part B3 Side Boundary Envelope and the DCP Map Side Boundary Envelopes identifies the site is subject to a side boundary envelope that is determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of 4 metres. The side boundary envelope is demonstrated on sections where it is considered a side boundary (boundaries shared with No. 35 Hay Street and part No. 991 and No. 993 Pittwater Road). The proposed development complies with this control and therefore achieves the objectives of ensuring that development does not become visually dominant by virtue of its height and bulk, and ensures adequate light, solar access and privacy by providing spatial separation between buildings, privacy protection where considered necessary, and ensures the development responds to the topography of the site.

Part B5 Side Boundary Setbacks establishes that a 0.9 metre side setback is required for development on the site. It is further noted that side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences. The minimum side setback provided to the side boundary shared with No. 35 Hay Street is 3.453 metres and the minimum side setback to the boundary shared with Nos. 991 & 993 Pittwater Road is 6 metres. (Apartment 1), but is generally in excess of 10 metres. The proposed development therefore provides generous side setbacks to ensure the amenity of neighbouring development is preserved and to enable the establishment of landscaping in scale with the proposed development.

Part B7 Front Boundary Setbacks establishes a front setback of 6.5 metres for the primary street frontage. It also establishes the exception for corner allotments, where the front building setback may be reduced to a minimum 3.5 metres for the secondary frontage, but secondary street variations must consider the character of the secondary street and the predominant setbacks existing to that street. The proposed setback to Anzac Avenue is 6.5 metres and is consistent with prevailing setbacks along Anzac Avenue. The minimum proposed setback to Hay Street is 6.5 metres and the setback area is generally only utilised for landscaping and access pathways with the exception of a waste storage area.

Part B9 of the DCP requires a 6 metre setback to rear boundaries. The proposed development comprises a minimum rear setback of 6 – 12 metres which complies with this control.

The proposed development is therefore demonstrated to be consistent with side boundary envelope, side boundary setbacks, front boundary setbacks and rear boundary setbacks requirements of the DCP.

Landscaped Open Space

Part D1 of the DCP requires 40% of the site to be landscaped. SEPP Housing however prescribes a non-discretionary development standard at Clause 108(2)(e) as follows:

108 Non-discretionary development standards for independent living units—the Act, s 4.15

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

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

The consent authority cannot therefore require a more onerous standard.

Views

The objectives of this part D7 Views of the DCP are to:

- *allow for the reasonable sharing of views*
- *encourage innovative design solutions to improve the urban environment*
- *ensure existing canopy trees have priority over views.*

The ground floor of the proposal site approximately 2 metres below Hay Street, and compliant with the maximum building height for seniors housing development. The upper level of the development is also highly articulated to allow for the reasonable sharing of views. The proposed development is therefore considered to be consistent with these objectives.

Privacy

The objectives of Part D8 Privacy of the DCP are:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To provide personal and property security for occupants and visitors.*

The proposed development is generally consistent with the objectives of maintaining privacy to both dwellings within the development, and neighbouring the proposed development. Where any possible privacy impacts have been identified, they have been mitigated through separation, or application of appropriate screening.

Building Bulk, Building Colours and Materials

Parts D9 and D10 of the DCP relate to building bulk, building colours and materials.

Building bulk is managed through compliance with side, rear and front setbacks, compliance with the maximum building height, compliance with various building envelope controls, and through significant articulation being provided to the built form.

The proposed development responds to the topography and site conditions.

The proposed colours and materials blend into the natural streetscape and colours and materials are used to appropriately reduce building bulk, whilst maintaining consistency with the coastal character and compatibility with the established streetscape.