



## SECTION 8.2 REVIEW OF DETERMINATION

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Demolition of existing buildings, tree removal and the construction of 24 Independent Living Units under SEPP (Housing for Seniors or People with a Disability) 2004.

181 Allambie Road, Allambie heights

Prepared for: Allambie Heights Village Ltd

REF: M170097

DATE: 1 February 2021





# Contents

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<b>1.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>2.</b>	<b>SITE ANALYSIS AND CONTEXT .....</b>	<b>2</b>
2.1	The Site .....	2
<b>3.</b>	<b>DESCRIPTION OF THE DEVELOPMENT .....</b>	<b>3</b>
3.1	Development Assessed Under DA2020/0552 .....	3
	3.1.1 Local Planning Panel.....	3
<b>4.</b>	<b>DETERMINATION &amp; RESPONSE.....</b>	<b>4</b>
4.1	Response to reasons for refusal .....	4
<b>5.</b>	<b>CONCLUSION.....</b>	<b>8</b>

## FIGURES

<b>Figure 1</b>	Aerial image of the subject site (source: Six Maps).....	<b>2</b>
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# 1. Introduction

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This Report has been prepared for the applicant of No. 181 Allambie Road, Allambie Heights and accompanies an application to Northern Beaches Council to review a determination pursuant to Section 8.2 of the *Environmental Planning and Assessment Act 1979*.

The review of determination relates to DA2020/0552 for the '*Demolition works and construction of a Seniors Living Development*'.

The development application was refused development consent by the Northern Beaches Local Planning Panel (NBLPP) on 18 November 2020. In accordance with the EP&A Act, 1979 (*COVID-19 Legislation Amendment (Emergency Measures—Attorney General) Act 2020 No 5 ('Miscellaneous Act')*), the review application must be submitted, assessed and determined within 12 months of the refusal date, this being 18 November 2021.

The purpose of this review request is to respond to the reasons for refusal provided in the Notice of Determination and to seek the support of the NBLPP for the development.

It is noted that concurrently the applicant has commenced proceedings in the Land & Environment Court to appeal against the decision of the NBLPP, however, the proceedings would be discontinued if the subject review application is successful in achieving the grant of development consent.

This Statement is divided into five sections. The remaining sections include a brief site and context analysis; a description of the development; a response to reasons for refusal; and a conclusion.



## 2. Site Analysis and Context

### 2.1 THE SITE

The subject site is located on the western side of Allambie Road, adjacent to a large public reserve. The site comprises one irregular shaped allotment fronting Allambie Road with legal description of Lot 2615 in DP 752038. The site is owned by the Department of Industry – Lands (Crown Land) and leased to Allambie Heights Village Ltd. The location of the subject site is shown edged red and shaded yellow in the aerial image provided at Figure 1.



**Figure 1** Aerial image of the subject site (source: Six Maps)

Existing on the site is a retirement village known as William Charlton Village, Retirement Village which provides a range of affordable independent living units. The buildings are located adjacent to Allambie Road as evidenced in Figure 1.

The DA lodged Statement of Environmental Effects and supporting sub-consultant reports (as amended) provide a detailed description of the subject site, its context and constraints.

# 3. Description of the Development

## 3.1 DEVELOPMENT ASSESSED UNDER DA2020/0552

The development was original lodged with Council on 28 May 2020 sought to:

- Demolish the buildings, sheds and driveways/paths to the west of the existing three buildings at the front of the site;
- Construct 2 x 2 storey buildings, with one level of undercroft car parking;
- Provide 24 Independent Living Units over the 2 residential levels;
- Construct a single storey communal building containing recreation room, gym and spa; and
- Provide parking for 30 cars in the basement, and 17 visitor parking spaces at ground level.

The design of the development has not been altered as part of the review request as the reasons for refusal state that the information provided within the submitted Biodiversity Development Assessment Report (BDAR) was insufficient to determine the extent of impact on the Manly Warringah War Memorial Park, including the required Asset Protection Zone.

Further, the assessment of the development against the relevant planning instruments remains identical to that which is carried out in the Statement of Environmental Effects lodged with DA2020/0552.

### 3.1.1 Local Planning Panel

The DA was considered by the NBLPP on 18 November 2020. The Panel resolved as follows:

*That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, refuses Application No. DA2020/0552 for demolition works and construction of a Seniors Living Development at Lot 2615 DP 752038, 181 Allambie Road, Allambie Heights for the following reasons:*

1. *The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b),(c),(d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.*

#### **REASONS FOR THE DECISION:**

*The Panel was of the view that the site is capable of Seniors Living Housing however given the lack of crucial information with respect to the intensification of the development and the likely impacts it would have on the adjacent Manly Warringah War Memorial Park and the recognised biodiversity values contained within the park and the Manly Dam Catchment the Panel is unable to grant a development consent to the proposal in the absence of the crucial information. The Panel encourages the applicant to engage in formal discussions with the Council with respect to the submission of an updated biodiversity development assessment report (BDAR) that addresses the current biodiversity values contained within the park and how those values interrelate with the requirements to provide an appropriate asset protection zone for bushfire risk mitigation.*



## 4. Determination & Response

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### 4.1 RESPONSE TO REASONS FOR REFUSAL

Provided below is a response to the reasons for refusal:

1. *The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b), (c) (d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.*

**RESPONSE:** The development, as originally submitted, aligns with the Environmental Planning and Assessment Act 1979 NSW in terms of the matters of consideration under Section 4.15 referred to by the NBLPP. An assessment against the abovementioned criteria is provided below and is supported by consultant reports submitted with the original application.

- (b) 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 submitted, is supported by a number of consultant reports which assessed the development on its merits and concluded that the development was and remains worthy of Council's support. Indeed the development was submitted to Council in conjunction with the following reports:



- Arboricultural Impact Assessment Report prepared by Arterra Consulting Arboriculture
- Biodiversity Management Plan prepared by Total Earth Care Pty Ltd
- Waterway impact Statement prepared by Total Earth Care Pty Ltd
- Biodiversity Development Assessment Report prepared by Total Earth Care Pty Ltd
- Bush Fire Management Plan prepared by Total Earth Care Pty Ltd

All of the above-mentioned reports support the development and any recommendations made have been implemented into the development to ensure no adverse or unreasonable environmental impacts result from the development on the natural or built environment. We encourage Council to re-examine the submitted consultant reports which provide detailed discussion and conclusions in favour of the development.

Importantly, the development does **not** seek or require a new Asset Protection Zone in the Manly Dam Reserve land in order to achieve the 85m Asset Protection Zone (APZ) required by the NSW Rural Fire Service **and** that no clearing of native vegetation within the Manly Dam Reserve land is required to accommodate the development. For clarity, a map of the subject site and existing/required APZs is attached to this report.

The existing management agreement between the former Warringah Council and Allambie Lutheran Homes Inc (now Allambie Heights Village Ltd) dated 2009 for the existing Seniors Housing development located at No. 3 Martin Luther Place (adjoining to the south of the subject site) that will be maintained and utilised (in part) by the development. The management agreement ensures a 30m wide APZ measured from the western boundary of No. 3 Martin Luther Place and extending into the Manly Dam Reserve land. Such matters are clearly explained in the submitted Bush Fire Management Plan prepared by Total Earth Care that was lodged with the DA (and again with the subject application). It is noted that Council has accepted payment of \$26,643.00 from Allambie Lutheran Homes Inc to establish the APZ and that it is Council's responsibility to maintain the APZ as an Inner Protection Area.





This agreement was created via a Council DA consent condition in 2004 (DA2004/335). The relevant condition for its creation is condition 5 of that DA, with the operational management requirements of the APZ set by the requirements of Condition 6 of that DA.

The APZ was confirmed as created and finalised for Council to therefore manage, by Councils Team Leader of Land Management and Foreshores, Mr Steve Bax via correspondence dated 23 April 2009, sent to Allambie Heights Village. This was reiterated by Councils Executive Manager Parks and Recreation, Steve Lawler, in correspondence sent 17 July 2019, confirming that the 30m wide APZ on Manly Dam Reserve land, is being managed in accordance with the operational management requirements of the APZ set by the requirements of Condition 6 of the 2004 DA.

As indicated, the development requires an 85 metre APZ with the Inner Protection Area being 30 metres within the Manly Dam Reserve, as presently established as part of the abovementioned management agreement with No. 3 Martin Luther Place. Thus, there is no new clearing of native vegetation that would be brought about by the development.

The management agreement finalised in 2009 was the basis of Bush Fire Management Measures/actions which Council deemed appropriate/adequate to safely allow the development of the immediately adjacent Residential Aged Care Facility (which was also subject of a substantial redevelopment approved by the Sydney North Planning Panel in 2017 - DA2017/0085), whose residents (who suffer from dementia) remain significantly more vulnerable than the current proposals' residents, being independently living over 55's.

The attached map makes clear the overlap of the existing and proposed APZ's and that the new APZ does not extend past the existing APZ in any location. Therefore, the required 85m for the new development is achieved without requiring any new APZ (vegetation clearing and the like) in the Manly Dam Reserve land. This fact was confirmed by the NSW Rural Fire Service as part of giving their concurrence to the current and previous developments via written advice dated 2 December 2019 and 31 July 2020. On this basis, there cannot be any new or unexpected impact on biodiversity within the Manly Dam Reserve land as a result of the development. Hence, this reasoning providing by the NBLPP for refusing the subject application is unfounded.

Attached to this report is a response prepared by Total Earth Care to the reason for refusal of the previous application by the NBLPP. It confirms that no trees are required for removal within the Manly Dam Reserve. Furthermore, the submission from Total Earth Care also confirms that a total of 6 mature native trees are required for removal within the subject site to create the required inner and outer asset protection zones. Tree removal will be replaced in abundance in areas outside of the asset protection zones, as outlined in the submitted landscape plans.

In terms of social and economic impacts in the locality, the proposal will have no adverse effects. Undertaking the construction works will have some short-term positive economic impacts through employment generation, both direct employment and multiplier effects.

The proposal is considered to have strong positive social impacts. Detached dwellings are the predominant housing form within the area which are generally unsuitable when aging in place where level living and community interaction is often needed by residents as they age. The aim of the Housing for Seniors SEPP is to overcome a lack of suitable housing and to provide high quality accommodation for seniors, whilst maintaining the predominant scale and character of development in the locality.

The Northern Beaches LGA has an aging population with a generally higher proportion of aged persons relative to the Sydney Metropolitan Area as a whole, and therefore has a higher demand for seniors housing.



The proposed development will provide an appropriate style of seniors housing that will provide a high standard of independent living units. A number of new jobs will be created as a result of the development thus increasing employment opportunities for local residents.

As such, the development adequately satisfies criteria (b).

*(c) the suitability of the site for the development*

The suitability of the site for the development was adequately addressed within the Statement of Environmental Effects submitted to Council. The report discussed site suitability under three distinct headings as follows:

Access to Services

The subject site is located within 400m of various bus stops (as required by the Seniors Housing SEPP) on Allambie Road and these stops are accessible by means of a suitable access pathway, being a concrete footpath. The bus stops are regularly serviced by routes 280 and 142 to Chatswood and Manly, respectively. There are various bus stops within these centres located within 400m of a range of services and facilities, including shops, banks, community and recreational services and medical services. The available bus services and proximity to facilities satisfies the requirements of Clause 26 of the SEPP.

As the site is within an established area, electricity, telephone, gas, water and sewerage is readily available to the subject site.

Car Parking

Parking requirements for seniors housing developments are prescribed within the Seniors Housing SEPP. The development provides for a total of 30 resident car parking spaces within an undercroft area, which exceeds the parking requirement for the development when calculated pursuant to the rates prescribed in the Seniors Housing SEPP.

Hazards

The subject site is bush fire prone land. The Bushfire Assessment Report prepared by Total Earth Care and demonstrates that the development complies, or is capable of complying, with the relevant requirements of *Planning for Bush Fire Protection 2006*, subject to incorporating the recommendations of the Report.

The site is not in an area recognised by Council as being subject to landslip or flooding constraints. The development is not likely to increase the likelihood of such hazards occurring and is considered appropriate in this instance.

Furthermore, it should be noted that, as mentioned in the minutes from the NBLPP meeting held on 18 November 2020, the panel was of the view that the site is capable of accommodating Seniors Living Housing.

*(d) any submissions made in accordance with this Act or the regulations*

The development application received a total of 110 submissions during (and following) the notification period between 6 and 20 July 2020. A written response to these submissions was prepared on behalf of the applicant in a letter to Council dated 26 August 2020. The letter provided detailed responses to the points of objection raised in the submissions, supported by consultant reports prepared by industry professionals.







It is noted that the significant majority of comments made by resident objectors during the NBLPP meeting were aimed at development surrounding and impacting on the Manly Dam Reserve land that was well beyond the scope of the subject development proposal and more generic in nature as to environmental concerns.

*(e) the public interest*

The development will increase the supply of seniors housing in a form that meets the housing needs of the scale and character of development in the locality, and is suitable in terms of being an expansion to an existing facility, thereby complementing existing infrastructure.

The development has also been designed to protect the amenity of adjoining development, as well as to provide a high degree of amenity for the eventual residents of the development.

The site is located in close proximity to public transport services which allow convenient access to services and facilities and satisfies the site requirements of the Seniors Housing SEPP. The development will generally have positive environmental impacts and no adverse impacts on the amenity of neighbouring properties. The development is therefore considered to be in the public interest.





## 5. Conclusion

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This Statement accompanies a Section 8.2 request to review the determination of DA2020/0552.

The assessment provided within this Statement considers the grounds for refusal as stated in Council's Notice of Determination, dated 18 November 2020, and provides additional information and a detailed explanation as to how each matter raised by the NBLPP has been addressed by the original proposal.

It is considered that the development satisfactorily addresses the stated grounds for refusal and therefore, ought be approved. We respectfully request that the original determination be reviewed, and the refusal determination be revoked.

