

STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed seniors
housing pursuant to SEPP
(Housing for Seniors or
People with a Disability
2004)

1 Drew Place, Belrose

Statement of Environmental Effects

Proposed seniors housing pursuant to SEPP (Housing for Seniors or People with a Disability) 2004



Prepared under instructions from Newquest Developments Pty Limited

Prepared by Greg Boston

B Urb & Reg Planning (UNE) MPIA
Boston Blyth Fleming Pty Ltd
(ACN 121 577 768)

Suite 1/9 Narabang Way
Belrose NSW 2085

Tel: (02) 99862535

August 2020

TABLE OF CONTENTS

1	Introduction.....	4
2	Site Analysis	6
2.1	Site Description and location	6
2.1.1	The Site	6
2.1.2	The locality.....	9
2.1.3	Site analysis	11
3	Description of Proposed Development	13
3.1	Details of the proposed development.....	13
4	Statutory planning framework	15
4.1	State environmental planning policy (housing for seniors or people with a disability) 2004..	15
4.1.1	Aims of policy.....	15
4.1.2	Land to which the sepp applies	15
4.1.3	Key concepts	16
4.1.4	Site compatibility criteria	16
4.1.5	Site related requirements	16
4.1.6	Design requirements.....	17
4.1.7	Development standards to be complied with.....	27
4.1.8	Standards that cannot be used to refuse development consent for self contained dwellings	28
4.1.9	Compliance table	30
4.2	Warringah Local Environmental Plan 2011	33
4.3	Warringah development control plan 2011	33
4.4	State environmental planning policy no.55 – remediation of land	47
4.5	State environmental planning policy (building sustainability index: basix) 2004	47
4.6	State environmental planning policy (infrastructure) 2007.....	47
4.7	Matters for consideration pursuant to section 4.15(1) of the environmental planning and assessment act 1979 as amended.....	47
5	Conclusion	52

ANNEXURE 1: CLAUSE 4.6 VARIATION REQUEST - CLAUSE 40(4)(C) SEPPHSPD

1 INTRODUCTION

This document forms a component of a development application proposing the construction of a seniors housing development incorporating 6 x 2 bedroom in-fill self-care housing units and at-grade car parking for 6 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD).

The architect has responded to the client brief to provide for a residential development of exceptional design quality which responds appropriately to the constraints and opportunities identified through detailed site and context analysis whilst maintaining appropriate levels of amenity to the adjoining residential properties. The final design is also responsive to the minutes arising from formal pre-DA discussions with Council including the provision of greater building articulation and the adoption of the northern boundary as the rear boundary of the site for the purpose of applying clause 40(4)(3) of SEPP HSPD.

Having regard to the detail of the proposal we have formed the considered opinion that the development will not give rise to any unacceptable environmental, streetscape or residential amenity impacts. The development will however provide for additional housing for seniors or people with a disability in an area ideally suited to this form of housing being located within short level walking distance of Glenrose Shopping Centre, Glen Street Theatre, Belrose Library and the Lionel Watts sports, showground and dog exercise precinct.

Consistent with the outcomes sought by Council the highly articulated and modulated 1 and 2 storey building form assists in maintaining the visual appearance of detached style housing within a landscaped setting. In addition to this Statement of Environmental Effects, the application is also accompanied by the following:

- Survey Plan prepared by Donovan Associates;
- Proposed plans, elevations, sections, shadow diagrams, montages prepared by Turner Hughes Architects;
- Design Statement prepared by Turner Hughes Architects;
- Stormwater drainage plans prepared by Northern Beaches Consulting Engineers;
- Flood Risk Management Report prepared by Northern Beaches Consulting Engineers;
- Arborist Report prepared by Hugh the Arborist;
- Landscape Plans prepared by APLD Landscape Design;
- Traffic Assessment prepared by PDC Consultants;
- BCA Assessment prepared by BMG;
- BASIX Assessment prepared by ESD Synergy;
- Accessibility Report prepared by Funktion;

- Waste Management Plan prepared by Turner Hughes Architects.

In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act, 1979
- Warringah Local Environmental Plan 2011
- Warringah Development Control Plan 2011
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;
- Seniors Living Policy Urban Design Guidelines for Infill Development.
- State Environmental Planning Policy (Building Sustainability Index: BASIX 2004)
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No.55 Remediation of Land

It is noted that SEPP 65 – Design Quality of Residential Flat Building is not applicable to the subject development as proposed.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The application has considered and satisfies the relevant planning controls applicable to the site and the proposed development.
- The proposed development is consistent with the desired future character of the locality.
- The proposed development will not have an unreasonable impact on the environmental quality of the land and the amenity of surrounding properties.
- The clause 4.6 variation request in relation to the minor variation to the clause 40(4)(c) single storey rear 25% development standard is well founded with strict compliance found to be unreasonable and unnecessary with sufficient environmental planning grounds to justify the variation sought.
- The site is assessed as suitable for the proposal, having regard to the relevant considerations pursuant to the SEPP (Housing for Seniors or People with a Disability) 2004.

2 SITE ANALYSIS

2.1 SITE DESCRIPTION AND LOCATION

2.1.1 THE SITE

The development site comprises 2 properties legally described as Lots 1 and 2, DP 228962, No. 1 Drew Place, Belrose. The consolidated development site has an area of 1395.2m². A location map is included as **Figure 1**.



Figure 1: Site Location (Source: Google Earth)

The property is located on the north eastern intersection Drew Place and Pringle Avenue and is occupied by a single storey detached dwelling house located across both allotments with vehicular access to both garage and carport parking available from both street frontages. A detached outbuilding is located in the rear yard and adjacent to the northern boundary of the site.

The site has a combined frontage of 36.825 metres to Drew Place, a frontage of 29.365m metres to Pringle Avenue, a northern boundary of 40.335 metres and an eastern boundary of 36.495 metres. The site does not contain any significant trees or remarkable landscape features with the topography of the site relatively flat as depicted on the site survey at Figure 2 below.



Figure 2: Survey extract

The streetscape presentation of the existing dwelling is depicted in Figures 3 and 4 over page.



Figure 3: Subject property as viewed from Pringle Avenue



Figure 4: Subject property as viewed from Drew Place

2.1.2 THE LOCALITY

The property located directly opposite the site, and situated at the south eastern intersection of Drew Place and Pringle Avenue, is known as No. 36 Pringle Avenue with this property occupied by a recently constructed Seniors Living Development comprising 6 x 2 bedroom town houses “the Gables”.

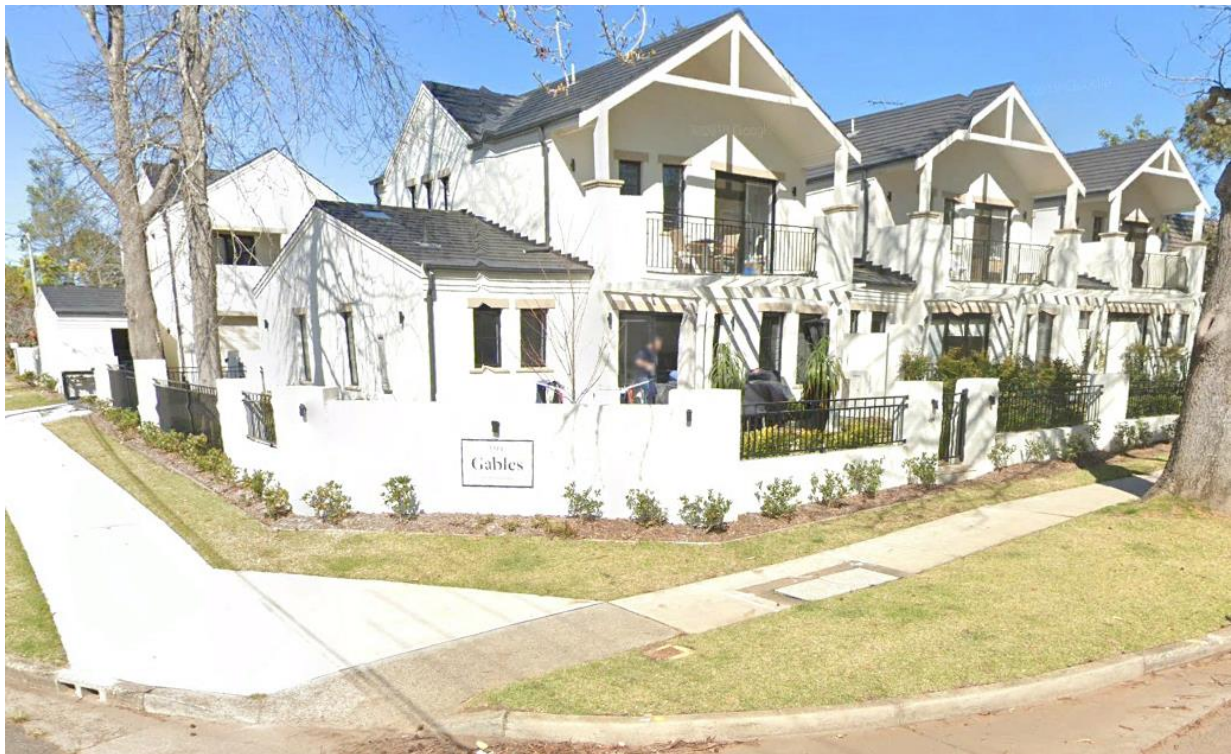


Figure 5: View of the seniors housing development opposite the site “the Gables”

The property to the north, No. 40 Pringle Avenue, is occupied by a 2 storey rendered and clad residence with flat metal roof and off street parking access via a driveway from Pringle Avenue. A swimming pool is located in the north eastern corner of the site. The property to the east, No. 3 Drew Place, is occupied by a 2 storey brick residence with pitched and tile roof and integrated garage accommodation accessed from Drew Place. A roofed pergola provides weather protection to the rear of the property. The property to the north east, No 9 Evelyn Place, is occupied by a detached dwelling house with a swimming pool located to the rear.



Figure 6: Property to the east of the subject site No. 3 Drew Place



Figure 7: Property to the north of the subject site No. 40 Pringle Avenue

Frenchs Forest showground and Lionel Watts Reserve is located immediately to the west of the site on Pringle Avenue.

The site is well located with respect to services and facilities. The site is located approximately 800 metres walking distance to Glenrose/Stockland Shopping Centre located on Glen Street. Woolworths and Aldi Supermarkets, a chemist and medical centre form part of the shopping centre. Glen Street theatre and associated facilities including the Glenrose library forms adjunct facilities in this Glenrose precinct.

We confirm that bus stops, located on each side (north and southern sides) of Glen Street, are located approximately 2 mins walking distance from the site. A bus stop is also located on Blackbutts Road to the west of Pringle Avenue, approximately 220 metres walking distance from the site. These bus stops provide bus service connections to the Glenrose Shopping Centre, Forestway Shopping Centre, Warringah Mall and the City.

2.1.3 SITE ANALYSIS

There are no topographical constraints impacting the site relevant to the development as proposed. These details are all included on the site survey submitted with the DA. The site is mapped as low risk flood prone land with the proposed floor levels ensuring the development is free from flooding hazard.

The relationship of the proposed development to the adjacent sites provides for appropriate built form separation, with the limited building height and scale mitigating any impacts to established views or outlooks from the properties.

Having regard to the urban design guidelines for infill development as published by the Urban Design Advisor Service of the NSW Department of Planning & Natural Resources the following observations are made:

Context

The development provides for six units with 3 units at ground floor level and 3 units at the first floor level set within an informal landscaped setting. We note that 4 of the units will have their single car garages located adjacent to the eastern boundary with units 2 and 3 having integrated garages.

Site Planning and Design

The design of the development has sought to reflect the character and style of detached style housing within the immediate locality, through the creation of a 2 storey built form, with pitched roofs, similar in style to the seniors housing development at No. 36 Pringle Avenue. The layout of the development provides private open space in the form of terraces to each dwelling. The majority of the units will have an east/west orientation with the exception of unit 6 which will have a north/south orientation.

Impacts on the Streetscape

The proposal provides for the partial retention of mature vegetation on the land and a two storey building form that is consistent with the applicable form of building contemplated for the locality. The setbacks to both the Pringle Avenue and Drew Place frontages provide for extensive landscaping treatments which will soften and screen the built form. The form of building provides for a contemporary infill outcome that is consistent with the intentions of the SEPP and the setting is augmented by the landscape detail as proposed by this application.

Impacts on the Neighbours

The limited building height combined with privacy screening measures to each of the proposed terraces and an enhanced site landscaping regime will ensure that the privacy and amenity of adjacent sites are retained. The shadow diagrams submitted with the application demonstrate that there are limited shadow impacts to neighbouring properties. Site analysis has determined that the single storey rear 25% clause 40(4)(3) SEPP HSPD standard is appropriately applied to the northern boundary given this boundaries relationship to the rear yards of adjoining development.

Internal site amenity

All of the units are afforded with generous entertaining terraces accessed off the main living areas to each of the units.

Significant enhancements to the landscaping is proposed throughout the site (as depicted in the landscape plan prepared by Apid Landscape Design) with the incorporation of additional tree planting, deep soil zones and dense screen shrub planting.

3 DESCRIPTION OF PROPOSED DEVELOPMENT

3.1 DETAILS OF THE PROPOSED DEVELOPMENT

The subject application proposes the demolition of the existing dwelling and associated site structures and the construction and strata subdivision of a seniors housing development incorporating 6 x 2 bedroom in-fill self-care housing units and at-grade car parking for 6 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD). The proposed development is depicted on the following plans prepared by Turner Hughes Architects:

DRAWING LIST:

DA01-G SITE PLAN
DA02-D ROOF PLAN
DA03-E GROUND FLOOR PLAN
DA04-F FIRST FLOOR PLAN
DA05-B SECTION A
DA06-B SECTION B
DA07-B SECTION C
DA08-B ELEVATION 01
DA09-B ELEVATION 02
DA10-B ELEVATION 03
DA11-E UNIT DETAILS - UNITS 1
DA12-E UNIT DETAILS - UNITS 2
DA13-E UNIT DETAILS - UNITS 3
DA14-E UNIT DETAILS - UNITS 4&5
DA15-E UNIT DETAILS - UNITS 6
DA16-A LOCATION PLAN
DA17-A SITE ANALYSIS
DA18-A SUN STUDY - JUNE 21 9AM
DA19-A SUN STUDY - JUNE 21 MIDDAY
DA20-A SUN STUDY - JUNE 21 3PM
DA21-A INTERNAL SOLAR ACCESS GROUND
DA22-A INTERNAL SOLAR ACCESS FIRST
DA23-A DEMOLITION/WASTE PLAN

The plans provide for 6 self-contained dwellings each comprising 2 bedrooms with disabled bedrooms and bathroom, living area and kitchen and study areas. Each unit is afforded with its own garage containing a car parking space. All individual units are provided with private open space in the form of terraces. A schedule of external building materials and colours is shown on the elevations together with montage image of the proposed development.

The proposal also involves the implementation of an enhanced and integrated site landscape regime as depicted on the landscape plans prepared by APLD Landscape Design with the required tree removal identified and appropriately addressed in the accompanying arborist advice prepared by Hugh The Arborist. The landscape proposal incorporates appropriate deep soil perimeter landscape treatments which will soften and screen the development and ensure that the 1 and 2 storey buildings sit within a landscape setting.

The acceptability of accessibility is dealt with in the accompanying access report prepared by Funktion. No objection is raised to the recommendations contained within these reports forming appropriate conditions of development consent. All stormwater will be gravity drained to the street drainage system via the required on-site stormwater detention system as detailed on the accompanying stormwater drainage plans prepared by NB Consulting.

4 STATUTORY PLANNING FRAMEWORK

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.1 STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

The following section of this report assesses the proposed development against the relevant provisions of the SEPP 2004 (as amended).

4.1.1 AIMS OF POLICY

The stated aims of the SEPP at clause 2 are to encourage the provision of housing that will:

- a) *Increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- b) *Make efficient use of existing infrastructure and services, and*
- c) *be of good design.*

The policy indicates that these aims will be achieved by:

- a) *setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in the policy, and;*
- b) *setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*
- c) *ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*

The architectural details submitted with the Development Application demonstrate that the development is of high design quality. The site locational and physical attributes facilitate its use as proposed and contextually the housing outcome is appropriate particularly given the character of the housing, density and spatial relationship of the adjoining developments.

4.1.2 LAND TO WHICH THE SEPP APPLIES

Clause 4 of the SEPP states that this policy applies to land within New South Wales that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if:

a) development for the purpose of any of the following is permitted on the land:

- i) dwelling houses;*
- ii) residential flat buildings;*
- iii) hospitals;*
- iv) development of a kind identified in respect of land zoned special uses.*

The subject allotment is zoned primarily for urban purposes (R2 Low Density Residential) on which dwelling houses are a permissible with consent. As the sites are not classified as environmentally sensitive land as identified in Schedule 1, or zoned for industrial purposes, the provisions of SEPP (SEPP – Housing for Senior or People with a Disability) 2004 apply.

4.1.3 KEY CONCEPTS

The development proposes the provision of self-contained dwellings to be used permanently for seniors or people with a disability. The proposed dwellings are self-contained as defined in clause 13 of the SEPP.

4.1.4 SITE COMPATIBILITY CRITERIA

The subject application is not one to which the application of a site compatibility certificate applies pursuant to clause 25 of the SEPP.

4.1.5 SITE RELATED REQUIREMENTS

Location and access to facilities

Pursuant to clause 26 a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access to:

- a) shops, banks and other retail and commercial services that residents may reasonably require, and*
- b) community services and recreational facilities, and*
- c) the practice of a general medical practitioner.*

The application is accompanied by an Accessibility Report. The report concludes that the development is situated where residents can access necessary services in line with the requirements of clause 26 of the SEPP.

The site is located within 280 metres of bus transport corridor on Glen Street that is served by 3 bus routes operated by Forest Coachlines that provide numerous services daily Monday to Friday from Belrose to Forest Way, Forestville and Chatswood Shopping Centres.

Glenrose Shopping Centre contains a number of shops and services. This shopping centre is located approximately 500 metres from the site. Destination shopping centres at Forest Way, Forestville, Chatswood provide a comprehensive range of services to readily satisfy Clause 26(1) and 26(5) of the SEPP.

The proposed development meets the location and access to facilities requirements as outlined above and further detailed in the Accessibility Report provided.

Bush Fire Prone Land

Pursuant to Clause 27 a consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land identified on a bush fire prone land map certified under section 146 of the Act as “Bush fire prone land – vegetation category 2” or “Bush fire prone land – vegetation buffer” unless the consent authority is satisfied that the development complies with the requirements of the document titled Planning for Bushfire Protection, dated December 2001.

The subject site is not identified as bushfire prone land.

Water and Sewer

Pursuant to clause 28 a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.

The subject site currently contains a dwelling house that is connected to a reticulated water and sewage system. The proposed development will connect to these existing systems. The location of the sewer line is indicated on the site survey. The proposal can comply with the water and sewer provision requirements as outlined.

4.1.6 DESIGN REQUIREMENTS

Site Analysis

Pursuant to clause 30 of the SEPP a site analysis plan accompanies this application. The relevant issues are discussed as follows:

a) Site Dimensions

Comment: The site dimensions have been detailed in Section 2.0 of this report.

b) Topography

Comment: Please refer to the survey plan and description of the site provided in Section 2.0 of this report. The site has no physical impediments to the land use outcome anticipated on this site.

c) *Services*

Comment: Please refer to the detail survey.

d) *Existing Vegetation*

Comment: Please refer to the Arborist Report and accompanying landscape plans.

e) *Micro Climates*

Comment: Please refer to the commentary provided within Section 2.1.3 (site analysis) regarding the orientation of dwellings and access to solar and natural ventilation outcomes.

f) *Location of Site Features*

Comment: Please refer to the survey detail and description of the site in Section 2.0 of this report.

g) *Views*

It is considered that the proposed development will not impede upon any established views from neighbouring properties. The proposed development is a maximum of two storeys in height.

h) *Overshadowing*

Comment: Please refer to the shadow diagrams prepared by Turner Hughes Architects. The shadow diagrams indicate that the dwellings and yards of the neighbouring properties situated will retain adequate sunlight in mid-winter (June 21st).

Surrounds of the Site

a) *Neighbouring buildings*

Comment: The neighbouring buildings are shown on the site survey, site analysis plans and floor plans prepared by Turner Hughes Architects.

b) *Privacy*

Comment: Appropriate spatial separation and privacy measures is provided between the proposed development and neighbouring dwellings as detailed on the architectural drawings.

c) *Walls built to the site's boundaries*

Comment: Please refer to the architectural and landscape details for the proposed boundary treatments.

d) *Difference in levels*

Comment: Site levels are shown on the site survey.

e) *Views and solar access*

Comment: The height and scale of the development as proposed does not impede upon any established views from neighbouring properties. Good levels of solar access will be retained to all neighbouring properties.

f) Major Trees

Comment: Please refer to the Arborists Report and landscape plans.

g) Street frontage features

Comment: Please refer to the site survey and commentary in Section 2.0 of this report.

h) Built form and character of adjoining development

Comment: The proposed development provides for a compatible building form within the context of the locality. Development within the visual catchment of the site comprises a diverse mix of dwellings and seniors housing developments set within informal landscaped settings.

The locality anticipates housing as a permitted land use including senior housing. The form of housing proposed by this application satisfies the development definition as per clause 13 of the SEPP.

The locality benefits from an abundance of open space and recreational areas.

i) Heritage features

Comment: N/A

j) Direction and distance to local facilities

Comment: The site is situated within close proximity to Forest Way Shopping Centre which contains a number of local facilities as described in Section 4.2.5. The Shopping Centre at Glenrose is located only 500 metres from the subject site.

k) Public open space

Comment: the site is conveniently located to a range of recreational and sporting venues.

l) Adjoining bushland and environmentally sensitive land

Comment: N/A

m) Sources of nuisance

Comment: The site is located within a quiet residential context. The nearest source of noise is that associated with traffic on Forest Way, which is located more than 500 metres away, with neighbouring dwellings, tree planting and landscaping providing a substantive acoustic barrier between the site and Forest Way.

Design of in-fill self-care housing

Pursuant to clause 31 of the SEPP the consent authority is to have regard to the Urban Design Guideline for Infill Development in its consideration of the application. An assessment pursuant to this guide is set out in the following table:

Issue	Key Requirement	Comment
Responding to context	Street and Lot Layout	The proposal responds to the established street and lot layout, through presenting the development as a 1 and 2 storey built form development with pitched roofs, similar in height and scale to the detached style of housing in the locality and existing seniors housing opposite at No. 36 Pringle Avenue.
	Subdivision Layout	The existing dwelling houses is sited across the 2 existing lots, therefore the amalgamation of the lots is not uncommon of the typical size and pattern of subdivision in the locality.
	Consistency of built form – massing and scale	The proposed development contains a 1 and 2 storey built form of the same height and scale to dwelling houses and seniors living developments in the immediate locality.
	Trees	Whilst trees are identified for removal to facilitate the proposed development, the majority comprise tree species suitable for removal without development consent.

Issue	Key Requirement	Comment
		The loss of these trees will be compensated by replacement tree planting and enhanced landscape regime throughout the site. Please refer to the Arborist Report and proposed landscape plan providing for the retention and enhancement of the trees and landscape features of the site.
Site Planning & Design	Dwellings to address the street	The site comprises a corner allotment with frontages to Drew Place (primary street frontage) and Pringle Avenue (secondary street frontage). The dwellings are orientated towards both streets and the northern boundary.
	Rear dwellings should be more modest in form	The site comprises a corner allotment. Site analysis has determined that the single storey rear 25% clause 40(4)(3) SEPP HSPD standard is appropriately applied to the northern boundary given this boundaries relationship to the rear yards of adjoining development.
	Maximise solar access and access to private open space	Living areas and private open space areas are afforded appropriate levels of solar access.

Issue	Key Requirement	Comment
	<p>Centralised parking in car parking courts are preferred to reduce the amount of space occupied by driveways, garages, etc. Retain existing crossings if possible.</p>	<p>Spatial separation between neighbouring dwellings is maintained by the provision of boundary setbacks and substantial boundary edge landscaping.</p> <p>Units 2 and 3 include integrated garages. The remaining 4 garages are located adjacent to the eastern boundary in a row directly access of the internal driveway.</p> <p>The existing property has 3 crossovers (2 from Pringle Ave and 1 from Drew Place). These crossovers will be removed with only 1 new crossover proposed from Drew Place.</p>
Impacts on the Streetscape	<p>Built Form; trees; amenity; parking and garaging and vehicular circulation.</p>	<p>These matters have been addressed in term of the comments on context and site planning.</p>
Impact on neighbours	<p>Minimise impacts to by maintaining a consistency in the pattern of building.</p> <p>Landscaping</p>	<p>The relationship of the siting of the development to the neighbouring dwellings north and east, maximises the opportunity for spatial separation between dwellings. The majority of the dwellings are orientated in an east/west axis across the site.</p>

Issue	Key Requirement	Comment
		Edge condition planting augments planting on the adjacent sites and increases privacy by screening in conjunction with the established fencing.
Internal Site Amenity	<p>Maximise Solar Access</p> <p>Clearly define and identify individual dwellings</p>	<p>The siting of balconies and living areas maximises the opportunities for solar access on natural light and ventilation to the individual units.</p> <p>The design of the development clearly defines the dwelling entries so that they are easily identifiable and legible, providing a sense of address to each individual unit.</p>

It is considered that the proposal appropriately responds to the design code.

Neighbourhood Amenity and Streetscape

Pursuant to clause 33 of the SEPP, the proposed development should:

- a) recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area, and*

Comment: The site analysis and assessment pursuant to the Urban Design Guidelines (refer to the table above) has dealt with this issue.

- b) retain, compliment and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in the local environmental plan, and*

Comment: Not Applicable.

- c) maintain reasonable neighbourhood amenity and appropriate residential character by*

i) providing building setbacks to reduce bulk and overshadowing, and

Comment: The proposed setbacks accord with the built form controls contained within Warringah DCP 2011.

ii) using building form and siting that relates to the site's land form, and

Comment: The height, scale and form of the development relates to the topography of the site and that of the neighbouring sites.

iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and

Comment: The proposal conforms to the building height standard of the SEPP (8 metres) and is compatible with the height and scale of the neighbouring dwellings, the majority of which are 2 storeys, with pitched roofs. The height is also compliant with the building height standard in the WLEP 2011 (8.5 metres).

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

Comment: No buildings are located on the boundaries of the site.

d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and

Comment: The site comprises a corner allotment, with dual street frontages to Drew Place and Pringle Avenue. A minimum front building line of 3.8 metres is proposed to Drew Place and 6.5 metres to Pringle Avenue, which accord with the WDCP front building setback provisions applicable for corner allotments.

e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and

Comment: A landscape concept plan is included as a component of the works proposed.

f) retain, wherever reasonable, major existing trees, and

Comment: A detailed Arborist Assessment accompanies the DA and considers the removal and retention of existing trees on the site.

g) be designed so that no building is constructed in a riparian zone

Comment: The proposed buildings are not situated within a riparian zone.

Visual and Acoustic Privacy

Pursuant to clause 34 of the SEPP the proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:

- a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and*

Comment: The design and orientation of individual dwellings has been developed through appropriate site analysis to ensure that the development anticipates and appropriately addresses any potential amenity impacts to adjoining developments, particularly No.3 Drew Place, No.9 Evelyn Place and No.40 Pringle Avenue. In this regard, the living room and adjacent terrace of Unit 6 have been setback between 8 and 10 metres from the northern boundary to prevent direct overlooking opportunity into the rear yards of the adjoining properties. Further, secondary privacy attenuation is afforded through the appropriate placement of canopy trees adjacent to the northern boundary of the site as depicted on the accompanying landscape plans. A fixed privacy screen has also been provided to the eastern edge of the Unit 6 balcony to obscure sideway views into the rear yard of No. 3 Drew Place.

- b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.*

Comment: This design principle has been considered and is incorporated into the layout and design of the proposed dwellings.

Solar Access and Design for Climate

Pursuant to clause 35 the proposed development should:

- a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and*

Comment: A solar access study and shadow diagram prepared by Turner Hughes Architects accompanies this application. The shadow diagrams indicate that adequate solar access will be maintained to the north facing living and adjacent rear open space areas of all surrounding properties including No.3 Drew Place between 9am and 3pm on 21st June.

- b) involving 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.*

Comment: These design principles have been considered and incorporated in conjunction with detailed site analysis into the design of the proposed development.

Stormwater

Pursuant to clause 36 the proposed development should:

- a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by finishing driveways surfaces with semi impervious material, minimising the width of paths and minimising paved areas, and*

Comment: Detailed hydraulic and stormwater plans accompany this application.

- b) Include where practical on-site stormwater detention or re-use for second quality water uses.*

Comment: These design principles have been incorporated and detailed with the Development Application.

Crime Prevention

Pursuant to clause 37 the proposed development should provide personal property security for residents and visitors and encourage crime prevention by:

- a) site planning that allows, from inside each dwelling, general observation of the street, the site and approaches to the dwellings entry, and*

Comment: The design of the development enables casual observation of Pringle Avenue and Drew Place including the approaches to the individual units. The individual unit entries are well located centrally within the site, so that they are easily identifiable, providing a sense of address to each unit and passive surveillance.

- b) where shared entries are required, provide shared entries that serve a small number of dwellings and that are able to be locked, and*

Comment: Shared entries are proposed for the first floor units. This level can be accessed via the lift or stairs. This level only serves 3 units and each unit will be able to be locked.

- c) Providing dwellings designed to allow residents to see who approaches their dwelling without the need to open the front door*

Comment: This design principle has been incorporated into the detailed design of the proposed development.

Accessibility

Pursuant to clause 38 the proposed development should:

- a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and*

Comment: These matters have been addressed in detail in the Accessibility Report submitted in support of the application.

- b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.*

Comment: These matters have been addressed in detail in the Accessibility Report submitted in support of the application.

Waste Management

Pursuant to clause 39 the proposed development is provided with waste storage facilities that maximise recycling.

4.1.7 DEVELOPMENT STANDARDS TO BE COMPLIED WITH

Pursuant to clause 40 a consent authority must not consent to a development application unless the proposed development complies with the standards specified in this clause:

Site Size

The size of the site is at least 1,000 square metres, and

Comment: The total area of the consolidated allotment is 1395.2sqm and satisfies the development standard.

Site Frontage

The site frontage is at least 20 metres wide measured at the building line, and

Comment: Measured at the building line, the site frontage is 36.825 metres wide to Drew Place and 29.365 metres to Pringle Avenue, which satisfies this standard.

Height in zones where residential flat buildings are not permitted

a) the height of all buildings in the proposed development must be 8 metres or less, and

Comment: The proposal conforms to the maximum building height of 8 metres, as depicted on the proposed drawings.

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

Comment: The buildings do not exceed two storeys in height.

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

Comment: The site comprises a corner allotment. On this basis, there is no defined rear boundary of the site, pursuant to the provisions of the Warringah DCP 2011 (Clause B9) which states:

“On corner allotments where the minimum building setback is 6 metres the rear building setback does not apply.”

We are therefore of the opinion that Clause 40(4)(c) does not apply to the site or the development as proposed on the basis that WDCP specifically excludes the operation of a rear boundary setback for corner sites on land to which WDCP applies.

That said, and for abundant caution, a clause 4.6 request to vary this development standard has been prepared with the northern boundary being considered the rear boundary for the purpose of the standard. The required clause 4.6 variation request is at Annexure 1 with such request well founded for the reasons outline in the request.

Self-Contained Dwellings

Schedule 3 of the SEPP specifies standards that self-contained dwellings must be designed to be in accordance. It is normal for these requirements to form conditions of development consent. The self-contained dwellings are able to comply with the relevant provisions and it is usual for the Council to condition certification of the finished dwellings to conform to these standards.

4.1.8 STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT FOR SELF CONTAINED DWELLINGS

Clause 50 of the SEPP requires that a Consent Authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling on any of the following grounds:

*a) **building height:** if all proposed buildings are 8 metres or less in height*

Comment: The buildings comply with this control.

*b) **density and scale:** if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,*

Comment: The development provides for an FSR of 0.5:1. In relation to the GFA/ FSR proposed we have formed the following opinion:

- Consistent with the outcome sought by Council the highly articulated and modulated 1 and 2 storey pavilion style building form assists in maintaining the visual appearance of detached style housing within a landscaped setting.
- The development sits comfortably below the 8.5 metre WLEP 2011 height of buildings standard and also below the 8 metre ceiling height standard with SEPP HSPD;
- The landscaped area exceeds the minimum 30% landscape and 15% deep soil SEPP HSPD standard with complimentary and compatible setbacks provided to all boundaries.
- The proposed development will not give rise to any unacceptable residential amenity impacts in terms of privacy, view loss, overshadowing or visual bulk.
- The integrated site landscape regime proposed will soften and screen the building when viewed from the street and neighbouring residential properties.
- The development will increase the supply of housing for seniors and people with a disability within immediate proximity of a neighbourhood centre.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development offensive, jarring or unsympathetic in a streetscape context nor when assessed against the built form characteristics of development within the sites visual catchment. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

It has been determined that the GFA/FSR has been appropriately distributed across the site having regard to the relationship of the proposal to the established built form arrangement on adjoining properties and the maintenance of appropriate residential amenity and streetscape outcomes.

c) Landscaped Area: *a minimum of 30% of the area of the sites is to be landscaped,*

Comment: The proposed development incorporates 491m² soft landscaped area equating to 35.4% of the site area. This area is well in excess of the minimum required. The outcome provides for an appropriate placement of deep soil landscaping and good levels of spatial separation to adjoining development.

d) Deep Soil Zones: *if, in relation to that part of the site that is not built upon, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site. Two thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres*

Comment: The proposal incorporates 342m² or 24.5% of the landscaped area which is in excess of this control. Deep soil landscaped area has been provided adjacent to the northern boundary of the site to facilitate the planting of canopy trees.

e) solar access: *Living rooms and private open spaces for a minimum of 70% of the dwellings of the development must receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter;*

Comment: All 6 units are compliant with the private open space requirements. Unit 1 represents the only non-compliance with internal solar access to the living room. The development is compliant with the minimum 70% of the dwellings receiving a minimum of 3 hours direct sunlight between 9am – 3pm in mid-winter.

f) private open space for in-fill self-care housing:

i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and

ii) In the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area.

Comment: The ground floor and first floor terraces all exceed the minimum prescriptive standards associated with SEPP and comprise functional spaces, extending from the living/dining room areas.

g) Parking: *at least the following is provided:*

- i) 0.5 car spaces for each bedroom where the development application is made by a person other than the Department of Housing or a local government or community housing provider.

Comment: The development provides 12 bedrooms at 0.5 spaces per bedroom equates to 6 parking spaces. 6 accessible car parking spaces (1 to each dwelling) are provided which is compliant with the standard.

4.1.9 COMPLIANCE TABLE

The table below provides a summary of details in respect to compliance with standards that apply to this development proposal.

Standard	Requirement	Proposal	Complies
Location, Facilities & Support Services	Site within 400m of transport that can provide access to Facilities and Support Services	Site is located within 400m of bus stops on Glen Street.	Yes
Site Frontage	The site frontage is 20 metres wide measured at the building line.	Complies	Yes
Wheelchair Access	100% access to road or internal driveway; 10% access to adjoining road; 100% access to common areas and facilities; 100% adaptable to disabled persons requirements.	100% access to road or internal driveway; greater than 10% access to adjoining road; 100% access to common areas and facilities; 100% adaptable to disabled persons requirement.	Yes
Height	8 metres 2 storeys Single Storey in rear 25% of the total site area	8 metres 2 storeys Clause 4.6 variation request at Annexure 1.	Yes Yes No – clause 4.6

Standard	Requirement	Proposal	Complies
FSR	0.5:1	0.5:1	Yes
Landscaped Area	<p>Minimum 30% of site as landscaped area.</p> <p>Deep soil zone –15% of site area.</p>	<p>35.4% of site landscaped.</p> <p>24.5% of site is deep soil zone.</p>	<p>Yes</p> <p>Yes</p>
Parking	<p>0.5 car parking spaces for each bedroom =</p> <p>12 bedrooms x 0.5 spaces per bedroom = 6 parking spaces</p>	<p>6 accessible car parking spaces are provided.</p> <p>(It is noted that the SEPP only requires 2 accessible spaces)</p>	Yes
Neighbour amenity and streetscape	Attractive residential environment is achieved	The proposed development maintains acceptable levels of privacy and amenity to surrounding properties and the streetscape	Satisfactory
Visual and Acoustic Privacy	Appropriate site planning and acceptable noise levels	The development provides acceptable visual and acoustic privacy levels.	Satisfactory
Solar Access	Adequate daylight to living areas of neighbours and solar access to neighbouring private open space	The shadow diagrams indicate that adequate solar access provided to neighbouring properties.	Satisfactory

Standard	Requirement	Proposal	Complies
Stormwater	Minimise Stormwater Run-off	Achieved – see hydraulic and stormwater drawings.	Satisfactory
Crime Prevention	Personal property security for residents and visitors and encourage crime prevention & passive surveillance.	The development has been designed to accord with the CPTED principals.	Satisfactory
Accessibility	Access to public transport, parking and disabled access to all aspects of the development.	The proposal accords with the accessibility requirements as demonstrated in the accessibility report.	Yes
Waste Management	Waste facilities that maximise recycling.	The proposal provides adequate waste & recycling facilities.	Satisfactory

4.2 WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

The land is zoned R2 Low Density Residential. Seniors housing as defined by the LEP is a prohibited use in the zone. However, the use remains permissible with consent via the operation of SEPP (HS&PD) 2004 and the operation of Clause 1.9 of the LEP. SEPP (HS&PD) 2004 is not omitted from operation by Clause 1.9(2) of the LEP and accordingly is the operative planning instrument.

The height of building map anticipates building to a maximum height of to 8.5m not including chimneys, flues, lift overruns or the like. The proposed development conforms with the 8.5 metre height limit and the 8 metre height limit (to the ceiling of the uppermost floor) pursuant to the standard of the SEPP.

The site is not within a mapped Acid Sulphate Soil area; with the majority of the site falling within the lowest risk landslip designation (not triggering preparation of a geotechnical report) and is not an identified heritage item. The site is not within a mapped bushfire zone however is identified as being affected by potential Low Hazard flooding. In this regard, the application is accompanied by a Flood Risk management Report prepared by Northern Beaches Consulting Engineers that confirms that the development will be safe from flooding hazard. This report satisfies the clause 6.3 Flooding Planning provisions of WLEP 2011. There are no physical constraints impacting the site to preclude the development contemplated.

4.3 WARRINGAH DEVELOPMENT CONTROL PLAN 2011

The following relevant DCP 2011 controls have been addressed with respect to consideration of the proposed Seniors Housing Development.

Control	Requirement	Proposed	Compliance
Side Boundary Envelope DCP Control B3	<p>Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of 4 metres.</p> <p>Objectives:</p> <ul style="list-style-type: none"> •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. •To ensure that development responds to the topography of the site. 	<p>The development complies with the building envelope control.</p>	<p>Yes</p>
Side Boundary Setbacks DCP Control B5	<p>Side boundary setbacks 0.9m.</p> <p>Objectives</p> <ul style="list-style-type: none"> •To provide opportunities for deep soil landscape areas. 	<p>The development provides a minimum side setback to the eastern boundary of 1.1m to the garages and 3m to ground floor Unit 3. The first floor unit (Unit 6) has a setback of between 1.7m and 3m.</p> <p>The setback to the northern boundary varies between 3m</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	<ul style="list-style-type: none"> •To ensure that development does not become visually dominant. •To ensure that the scale and bulk of buildings is minimised. •To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained. •To provide reasonable sharing of views to and from public and private properties. 	<p>to Unit 3 and 7m to Unit 2. These setbacks are increased at first floor level to between 7 and 10 metres.</p> <p>These setbacks are compliant with the control</p>	
Front Boundary Setbacks DCP Control B7	<p>The site is a corner allotment a minimum front boundary setback of 6.5 metres to Pringle Avenue and 3.5 metres to Drew Place.</p> <p>Objectives:</p> <ul style="list-style-type: none"> •To create a sense of openness. •To maintain the visual continuity and pattern of buildings and landscape elements. •To protect and enhance the visual quality of 	<p>The proposal includes a front boundary setback of 6.5 metres to Pringle Avenue and 3.8 metres to Drew Place.</p>	Yes

Control	Requirement	Proposed	Compliance
	streetscapes and public spaces. •To achieve reasonable view sharing.		
Rear Boundary Setback DCP Control B9	N/A – Corner Allotment does not apply.	N/A Corner Allotment	N/A
Traffic, Access and Safety DCP Controls C2	To minimise: a) traffic hazards; b) vehicles queuing on public roads c) the number of vehicle crossings in a street; d) traffic, pedestrian and cyclist conflict; e) interference with public transport facilities; and f) the loss of “on street” kerbside parking.	A Traffic and Parking Assessment Report has been prepared by PDC Consultants. The traffic and parking report demonstrates that the proposed development has no unacceptable traffic implications. The proposed development will only generate 2 additional vehicle trips during the peak periods, which will not have any noticeable or unacceptable effect on the road network serving the site or nearby intersections. Vehicular access to the site is via a new 4.8 metre wide driveway to Drew Place.	Yes
Bicycle Parking	Objectives	Bicycle Parking Spaces can be incorporated for residents within the individual garages.	Yes

Control	Requirement	Proposed	Compliance
DCP Control C3A	<ul style="list-style-type: none"> • To help meet the transport needs of the Warringah community • To encourage healthy active lifestyles and help reduce reliance on private motor vehicles • To provide convenience and safety for bicycle users 		
Stormwater DCP Control C4	<p>To ensure the appropriate management of stormwater.</p> <p>To minimise the quantity of stormwater run-off.</p> <p>To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments.</p> <p>To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).</p>	<p>Please refer to Stormwater Drainage Plans.</p> <p>All run-off from the development is to be directed to the OSD Control Pit. The OSD is designed in accordance with Warringah Councils "On Site Stormwater Detention Technical Specification" to reduce peak storm run-off flowrates to that of a "greenfields" site.</p>	Yes

Control	Requirement	Proposed	Compliance
Erosion and Sedimentation DCP Control C5	<ul style="list-style-type: none"> •To reduce the potential for soil erosion and adverse sedimentation impacts upon the environment. •To prevent the migration of sediment off the site onto any waterway, drainage systems, public reserves, road reserve, bushland or adjoining private lands. •To prevent any reduction in water quality downstream of the development site. 	Please refer to the erosion and sediment control plan provided in the stormwater engineers drawings.	Yes
Excavation and Landfill DCP Control C7	Excavation and landfill works must not result in any adverse impact on adjoining land.	No major excavation works proposed.	N/A
Demolition & Construction DCP Control C8	A demolition and waste management plan must be satisfactorily completed and submitted.	A demolition and waste management plan accompanies the application.	Yes
Waste Management DCP Control C9	Each development must include, or have access to Waste/Recycling Storage Rooms and Areas.	The proposal incorporates a dedicated residential enclosed waste storage area to Drew Place, within 6 metres walking distance from the adjacent	Yes

Control	Requirement	Proposed	Compliance
	<p>a) where the number of dwellings/units is 29 or less, the Waste/Recycling Storage Rooms or Areas must be located at the front of the development within 6.5 metres walking distance to the front boundary adjacent to the roadway. If a Waste/Recycling Storage Room or Area is to be provided at another suitable location within the building, a complementary Waste/Recycling Storage Room or Area must be provided within 6.5 metres walking distance to the front boundary adjacent to the roadway; or</p> <p>b) where the number of dwellings/units is 30 or more, the Waste/Recycling Storage Rooms or Areas must be located within 6.5 metres walking distance of the service area.</p>	roadway, compliant with this control.	

Control	Requirement	Proposed	Compliance
Private Open Space DCP Control D2	<p>Multi dwelling housing (not located at ground level) residential flat buildings and shop top housing, to provide 10sqm of private open space with a minimum dimension of 2.5 metres.</p> <p>Private open space is to be directly accessible from a living area of a dwelling and be capable of serving as an extension of the dwelling for relaxation, dining, entertainment, recreation and children's play.</p> <p>Private open space is to be located and designed to ensure privacy of the occupants of adjacent buildings and occupants of the proposed development.</p> <p>Private open space shall not be located in the primary front building setback.</p> <p>Private open space is to be located to maximise solar access.</p>	<p>As demonstrated on the proposed floorplans prepared by Turner Hughes Architects. Each unit is afforded with a terraces in excess of 10 sqm, accessed directly from the living room/dining areas to each individual unit. Each of the terrace areas has been positioned to maximise solar access.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
Access to Sunlight DCP Control D6	<p>Pursuant to these provisions development is not to unreasonably reduce sunlight to surrounding properties. In the case of housing:</p> <ul style="list-style-type: none"> Development should avoid unreasonable overshadowing any public open space. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. 	<p>Shadow diagrams have been prepared by Turner Hughes Architects and are submitted with the application documentation. The shadow diagrams demonstrate that there are no significant overshadowing impacts to neighbouring properties as a result of the proposed development.</p> <p>The shadow diagrams also confirm that more than 50% of the proposed units private deck areas and the private open space of neighbouring residential dwellings will receive a minimum of three hours direct sunlight between 9am and 3pm on June 21.</p>	Yes
Views DCP Control D7	<p>Development is to allow for the reasonable sharing of views, encourage innovative design solutions and ensure existing canopy trees have priority over views.</p>	<p>The proposed development will not impact upon any established views.</p>	Yes

Control	Requirement	Proposed	Compliance
Privacy DCP Control D8	<p>Ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.</p>	<p>The development has been designed through detailed site analysis to ensure that appropriate privacy is maintained to neighbouring residential properties through the design and orientation of the units, the appropriate use and placement of fenestration.</p> <p>First floor Unit 6 terrace will include an eastern edge privacy screen in addition to generous setbacks proposed to the northern and eastern boundaries.</p>	Yes
Building Bulk DCP Control D9	<p>Encourage good design and innovative architecture to improve the urban environment. Minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</p>	<p>A Design Statement has been prepared by Turner Hughes Architects and this accompanies the application documentation.</p> <p>The development has been designed through detailed site context analysis to provide through a contextually responsive building form maintaining appropriate amenity to neighbouring properties and a high level of amenity to future occupants.</p> <p>The development has regard to the scale and proportion of existing dwellings in the locality and the existing seniors housing development at No. 36 Pringle Ave and No. 30-32 Blackbutts Road.</p>	Yes

Control	Requirement	Proposed	Compliance
		<p>The highly articulated building form and use of pitched roofs provides appropriate facade treatment and visual interest to the streetscape.</p> <p>The scale and footprint of the unit development is entirely compatible with the design themes established by neighbouring dwellings in the locality and established seniors housing developments.</p>	
Building Colours and Materials DCP Control D10	Ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.	<p>The proposed materials and finishes are indicated on the elevation plans prepared by Turner Hughes Architects.</p> <p>The materials and finishes are considered to be sympathetic to the style of the surrounding development and complementary to natural environment.</p>	Yes
Roofs DCP Policy D11	Roofs are to be designed to complement the local skyline.	The development incorporates pitched roof elements which is typical of the detached dwellings in the locality.	Yes
Glare and Reflection DCP Policy D12	Ensure that development will not result in overspill or glare from artificial illumination or sun reflection.	The proposed window glazing and roof finishes will not give rise to any unacceptable glare or reflection.	Yes

Control	Requirement	Proposed	Compliance
Accessibility DCP Policy D18	<p>To ensure convenient, comfortable and safe access for all people including older people, people with prams and strollers and people with a disability.</p>	<p>The proposed development has been designed to ensure a convenient, comfortable and safe access for all people including wheelchair accessibility.</p>	<p>Yes</p>
Safety and Security DCP Policy D20	<p>Buildings are to overlook streets as well as public and communal places to allow casual surveillance.</p> <p>2. Service areas and access ways are to be either secured or designed to allow casual surveillance.</p> <p>3. There is to be adequate lighting of entrances and pedestrian areas.</p> <p>4. After hours land use activities are to be given priority along primary pedestrian routes to increase safety.</p> <p>5. Entrances to buildings are to be from public streets wherever possible.</p> <p>6. For larger developments, a site management plan and formal risk assessment, including the consideration of the</p>	<p>The design of the development enables casual observation (from inside the units) of the street frontages. Entrances to each unit is located centrally within the site. The opportunity for seclusion within the approaches to the site is minimised as a consequence.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	<p>'Crime Prevention through Environmental Design' principles may be required. This is relevant where, in Council's opinion, the proposed development would present a crime, safety or security risk. See Crime Prevention and Assessment of Development Applications – Guidelines under Section 4.15 of the Environmental Planning and Assessment Act 1979 prepared by the Department of Urban Affairs and Planning (now Department of Planning).</p>		
<p>Private Property Tree Management DCP Policy E1</p>	<p>Development is to be situated and designed to minimise the impact on remnant native vegetation including canopy trees and understorey vegetation on remnant native ground cover species.</p>	<p>An arboricultural impact assessment has been prepared and accompanies this application. This report considers the trees required for removal and to be retained and protected on the site.</p>	<p>Yes</p>
<p>Landslip Risk DCP Policy E10</p>	<p>The site is identified as falling within Landslip Risk Area A.</p> <p>The applicant must demonstrate that:</p>	<p>No substantial excavation works are proposed as part of the development. The proposed development is considered to be suitable for the site and no geotechnical hazards will be created by the</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	<ul style="list-style-type: none"> The proposed development is justified in terms of geotechnical stability; and The proposed development will be carried out in accordance with good engineering practice. 	completion of the proposed development.	

4.4 STATE ENVIRONMENTAL PLANNING POLICY NO.55 – REMEDIATION OF LAND

State Environmental Planning Policy No. 55 – Remediation of Land applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to carrying out of any development on that land. In this regard, the likelihood of encountering contaminated soils on the subject site is extremely low given the following:

- Council's records indicate that site has only been used for residential uses.
- The subject site and surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.
- The subject site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Given the above factors no further investigation of land contamination is warranted. The site is suitable in its present state for the proposed residential development. Therefore, pursuant to the provisions of SEPP 55, Council can consent to the carrying out of development on the land.

4.5 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the residential component of the development and aims to encourage sustainable residential development.

A BASIX Assessment accompanies the development application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

4.6 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

It is considered that State Environmental Planning Policy (Infrastructure) 2007 is not applicable to the proposed development, given that the site is not located on a classified main road.

4.7 MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 AS AMENDED

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

(i) The provision of any Planning Instrument

This report clearly and comprehensively addresses the statutory regime applicable to the application pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

N/A

(iii) Any development control plan

Warringah DCP applies

(iiia) Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and

N/A

(iv) The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

N/A

(v) Any Coastal Zone Management Plan (within the meaning of the Coastal Protection Act 1979)

N/A

(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,

Context and Setting

i. What is the relationship to the region and local context in terms of:

The scenic qualities and features of the landscape

The character and amenity of the locality and streetscape

The scale, bulk, height, mass, form, character, density and design of development in the locality

The previous and existing land uses and activities in the locality

These matters have been addressed within this report.

ii. *What are the potential impacts on adjacent properties in terms of:*

Relationship and compatibility of adjacent land uses?

sunlight access (overshadowing)

visual and acoustic privacy

views and vistas

edge conditions such as boundary treatments and fencing

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be acceptable with regard to the SEPP.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

Travel Demand

dependency on motor vehicles

traffic generation and the capacity of the local and arterial road network

public transport availability and use (including freight rail where relevant)

conflicts within and between transport modes

Traffic management schemes

Vehicular parking spaces

These issues have been discussed in detail in the report. The development provides adequate carparking facilities in conformity with the standards of the policy.

Public Domain

The proposed development will have no adverse impact on the public domain.

Utilities

This has been addressed within this report.

Flora and Fauna

An arborist report and landscape plan detail the proposed works in regard to landscaping.

Waste Collection

Normal domestic waste collection applies.

Natural hazards

The site is located within a land slip risk area A. No substantial excavation works are proposed. It is considered that the proposed development will not affect the stability of the land or neighbouring properties.

Economic Impact in the locality

The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed works.

Site Design and Internal Design

- i) *Is the development design sensitive to environmental considerations and site attributes including:*

size, shape and design of allotments

The proportion of site covered by buildings

the position of buildings

the size (bulk, height, mass), form, appearance and design of buildings

the amount, location, design, use and management of private and communal open space

Landscaping

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the desired future character and built form controls of the SEPP.

- ii) *How would the development affect the health and safety of the occupants in terms of:*

lighting, ventilation and insulation

building fire risk – prevention and suppression

building materials and finishes

a common wall structure and design

access and facilities for the disabled

likely compliance with the Building Code of Australia

The proposed development can comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

i) *What would be the impacts of construction activities in terms of:*

The environmental planning issues listed above

Site safety

Normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

(c) The suitability of the site for the development

Does the proposal fit in the locality

Are the constraints posed by adjacent development prohibitive

Would development lead to unmanageable transport demands and are there adequate transport facilities in the area

Are utilities and services available to the site adequate for the development

Are the site attributes conducive to development

The adjacent development does not impose any unusual or impossible development constraints. The site is well located with regards to public transport and utility services. The development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography of the site, is of adequate area, and has no special physical or engineering constraints is suitable for the proposed development

(d) Any submissions received in accordance with this act or regulations

It is envisaged that Council will appropriately consider any submissions received during the notification period.

(e) The public interest

It is considered that the development is sensitive both to the natural and built environments and is consistent with the provisions of the SEPP.

5 CONCLUSION

This report clearly and comprehensively addresses the statutory regime applicable to the application and demonstrates that the proposed land use provides for an outcome that is consistent with the aims and objectives of the applicable SEPP. The development is permissible in the zone and complies with the relevant provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Having regard to the detail of the proposal we have formed the considered opinion that the development will not give rise to any unacceptable environmental, streetscape or residential amenity impacts. The development will however provide for additional housing for seniors or people with a disability in an area ideally suited to this form of housing being located within short level walking distance of Glenrose Shopping Centre, Glen Street Theatre, Belrose Library and the Lionel Watts sports, showground and dog exercise precinct

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The application has considered and satisfies the relevant planning controls applicable to the site and the proposed development.
- The proposed development is consistent with the desired future character of the locality.
- The proposed development will not have an unreasonable impact on the environmental quality of the land and the amenity of surrounding properties.
- The clause 4.6 variation request in relation to the minor variation to the clause 40(4)(c) single storey rear 25% development standard is well founded with strict compliance found to be unreasonable and unnecessary with sufficient environmental planning grounds to justify the variation sought.
- The site is assessed as suitable for the proposal, having regard to the relevant considerations pursuant to the SEPP (Housing for Seniors or People with a Disability) 2004.

Yours faithfully

Boston Blyth Fleming Town Planners



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

Annexure 1

Clause 4.6 variation request - Clause 40(4)(c) SEPP HSPD - Height in zones where residential flat buildings are not permitted

Clause 40(4)(c) SEPP HSPD

Pursuant to clause 40(4)(c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) a building located in the rear 25% area of the site must not exceed 1 storey in height.

Clause 40(4) of SEPP HSPD does not contain any associate objectives. The implicit objective was considered by the Court in the matter of 'Manderrah Pty Ltd v Woollahra Municipal Council and Anor [2013] NSWLEC 1196 where the implicit objectives were considered by Tuor C. In considering the objective of the development standard, Tuor C concluded (at [70]) the following:

70 The primary objective of cl 40(4)(c) is to limit the bulk and scale of a building to protect the amenity of the rear of adjoining properties. Placing built form into the rear of a property which generally forms part of its open space and adjoins the open space of other properties to the side and rear can have significant impacts on amenity not only from loss of solar access, privacy and views but also from the presence of increased or new building bulk and the removal of landscaping.'

The conclusion reached by Tuor C has been adopted more recently by Dickson C in 'Jigari Pty Ltd v City of Parramatta Council [2018] NSWLEC 1568'. In this regard, given the consistency in the approach adopted by the Court to determining the objectives for the development standard, the primary objective adopted by Tuor C and Dickson C in the above matters has been adopted.

The subject site is a corner allotment have 2 street frontages and 2 side boundaries. I note that the clause B9 Warringah DCP rear boundary setback control, applicable to permissible forms of development on the site pursuant to Warringah LEP, do not apply to corner allotments and therefore would not apply to the subject site.

That said, and for abundant caution, consideration has also been given to available case law in relation to how the clause 40(4)(c) SEPP HSPD standard has been more widely applied to development on corner allotments. In this regard, I refer to the following cases:

Nanevski Pty Limited v Rockdale City Council [2010] NSWLEC 1008

<https://www.caselaw.nsw.gov.au/decision/549f93973004262463af88cc>

64 Clause 40(4)(c) provides little guidance in terms of defining the rear 25% of the site when the site is not rectangular. In considering the two different approaches of Mr Adamson and Mr Burrell, I agree that the method of Mr Burrell should be used. Importantly, the clause makes specific reference to an "area of 25% of the site". Mr Adamson's method results in an area greater than 25% of the site area and, in my view, must be seen as inconsistent with the requirements of the clause. In the absence of any greater guidance from the Policy, the approach of Mr Burrell would seem to be a fair and practical approach to delineating the area required by cl 40(4)(c).

In this regard, the rear 25% is calculated on the basis of area and is not a lineal calculation based on boundary length.

Warrawee Securities Pty Limited v Pittwater Council [2006] NSWLEC 206

<https://www.caselaw.nsw.gov.au/decision/549f893f3004262463ad0dc8>

In this regard, the court found:

25 The council contended that the proposed buildings would be too high given the height controls under cl 38(4)(b) and (c) of SEPP – SL and in the context of the height of buildings in the locality.

26 Under the SEPP – SL single storey development is required in the rear 25% of the land. There was some dispute between the parties over how the rear 25% should be determined. Mr Dickson at the site meeting informed those present that for the purpose of determining setbacks Riverview Road was chosen as the 'front'. Thus the rear for the purposes of determining setbacks would be the western boundary of the land common with No 22 Hudson Parade. However, other evidence suggested that the rear 25% should be located in the northwestern corner of this corner parcel of land.

27 I am satisfied that it would be reasonable to apply the front and rear used by Mr Dickson to determine setbacks in order to identify the 'rear' for the purpose of determining the rear 25% of the land. It was agreed that Dwelling Nos 2 and 3 are two storeys in height and Dwelling No 1 is three storeys in height. Dwellings No 1, 2 and 3 all would be within the rear 25% and should be single storey if they were to comply with the requirements of SEPP - SL. By this method all three proposed western dwellings would not comply with the height limit under SEPP – SL as they are greater in height than the height of a single-storey dwelling.

This appeal related to a property known as No. 1 Riverview Road, Avalon being located on the corner of Riverview Road and Hudson Parades. The court accepted the reasonable interpretation for the front of the site to be the primary frontage and address being Riverview Road. The rear of the site was deemed to be the portion of the site furthest from the primary frontage.

I note that the consolidated allotment, the subject of this application, comprises 2 north-south running Lots with frontage and address to Drew Place. Applying the same principle adopted in *Warrawee Securities Pty Limited v Pittwater Council* [2006] NSWLEC 206 the rear 25% site area single storey development standard is reasonably applied to the boundary furthest from the Drew Place frontage being the northern boundary of the consolidated allotment.

We also note that the primary objective of cl 40(4)(c) is to limit the bulk and scale of a building to protect the amenity of the rear of adjoining properties. Placing built form into the rear of a property which generally forms part of its open space and adjoins the open space of other properties to the side and rear can have significant impacts on amenity not only from loss of solar access, privacy and views but also from the presence of increased or new building bulk and the removal of landscaping.'

Having regard to this objective, it is important to identify where the rear yards of surrounding properties, including the subject property, are actually located. The aerial photograph below clearly shows these existing rear yards areas relative to the subject site.



Figure 1 – Diagram showing the rear yards of the adjoining properties relative to the subject site

The following diagram shows the rear 25% area calculation applied to the northern boundary of the subject development site.

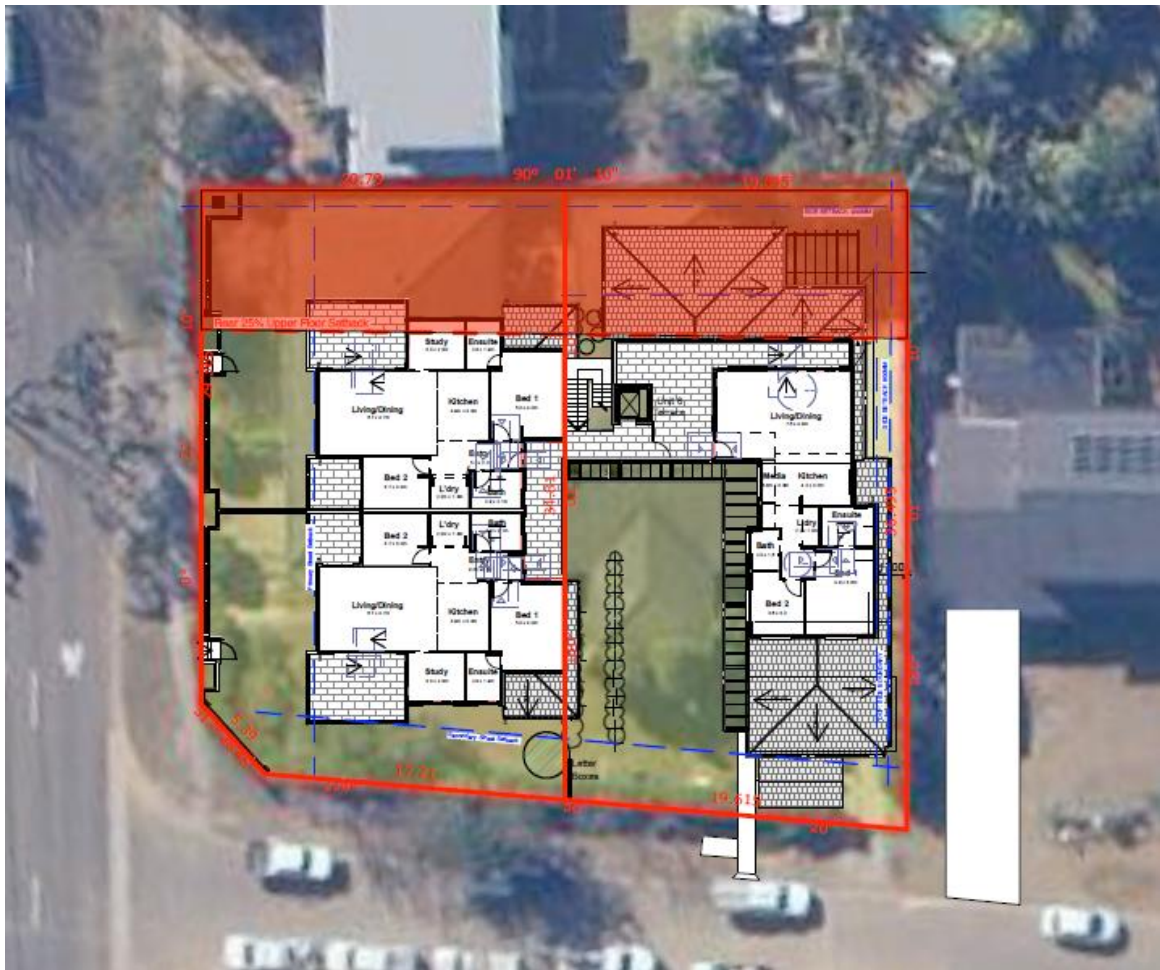


Figure 2 - Diagram showing the rear 25% site area calculation applied to the northern boundary of the subject development site relative to the rear yards of the adjoining properties

The following diagrams show the extend of the proposed first floor elements that breach the single storey rear 25% site area standard.

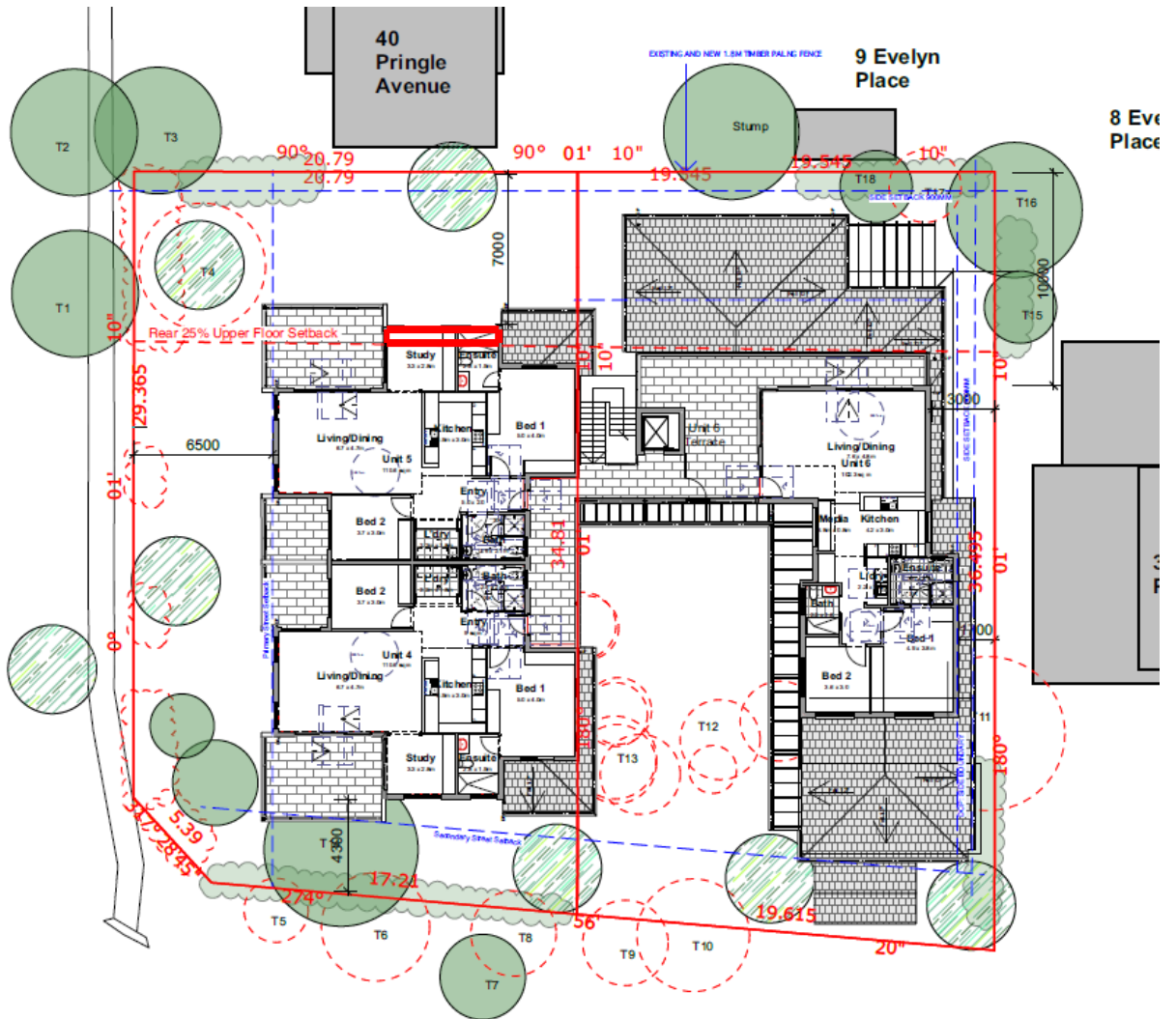


Figure 3 - First floor rear 25% site area single storey breaching elements in plan



Figure 4 - First floor rear 25% site area single storey breaching element (west elevation)

Whilst there are minor Unit 5 study and ensuite first floor elements that encroach within the rear 25 setback area, these elements do not extend past the rear eastern wall alignment of No. 40 Pringle Avenue, representing the rear yard of this adjoining property, with the north facing study and ensuite windows able to be suitably screened to prevent direct overlooking should the consent authority consider it necessary to do so.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of Warringah Local Environmental Plan 2011 (WLEP) provides:

- (1) *The objectives of this clause are: mark mar*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of WLEP provides:

- (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.*

This clause applies to the clause 40(4)(c) height development standard contained within SEPP HSPD.

Clause 4.6(3) of WLEP provides:

- (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.*

The proposed development does not comply with the height of buildings standard at clause 40(4)(c) of SEPP HSPD which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of WCLEP provides:

- (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 Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 40(4)(c) SEPP HSPD from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 40(4)(c) SEPP HSPD a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 40(4)(c) SEPP HSPD and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 40(4)(c) of SEPP HSPD?

4.0 Request for variation

4.1 Is clause 40(4)(c) of SEPP HSPD a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

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

Clause 40(4)(c) of SEPP HSPD prescribes a height provision that relates to certain development. Accordingly, clause 40(4)(c) of SEPP HSPD is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the implicit objective of the standard is as follows:

The primary objective of cl 40(4)(c) is to limit the bulk and scale of a building to protect the amenity of the rear of adjoining properties. Placing built form into the rear of a property which generally forms part of its open space and adjoins the open space of other properties to the side and rear can have significant impacts on amenity not only from loss of solar access, privacy and views but also from the presence of increased or new building bulk and the removal of landscaping.

Response: Having regard to the implicit objective of the clause 40(4)(c) SEPP HSPD standard we make the following observations:

- The Law Insider Dictionary defines Adjoining Properties as follows:

*Adjoining Properties means **any real property or properties the border of which is (are) shared in part or in whole with that of the Property**, or that would be shared in part or in whole with that of the Property but for a street, road, or other public thoroughfare separating the properties.*

- The surrounding subdivision pattern is irregular in terms of allotment geometry and the relationship of the rear open spaces of adjoining properties. There is no consistent established rear open space alignment as depicted in Figure 1.
- The rear 25% area of the subject site adjoins the rear yards of No. 3 Drew Place to the East, No. 40 Pringle Avenue to the north and No 9 Evelyn Place to the north east.
- The shadow diagrams at Attachment 1 demonstrate that the breaching 2 storey element located within the rear 25% area of the site will not overshadow the rear yard of any adjoining property at any time between 9am and 3pm on 21st June.
- Having identified potential view corridors from the rear areas of adjoining properties I have formed the considered opinion that the non-compliant second storey building elements proposed will not give rise to any scenic view impacts.
- In relation to privacy, I note that whilst there are minor Unit 5 study and ensuite first floor elements that encroach within the rear 25 setback area, these elements do not extend past the rear eastern wall alignment of No. 40 Pringle Avenue, representing the rear yard of this adjoining property, with the north facing study and ensuite windows able to be suitably screened to prevent direct overlooking should the consent authority consider it necessary to do so. In my opinion these breaching elements do not create an unacceptable privacy impact given the relationship of the associated windows to the adjacent rear open space area and the intervening landscape elements proposed.

Having regard to the above analysis, I am satisfied that the distribution of building height and floor space on this particular site achieves the implicit objective of the standard in that the design of the breaching 2 storey building element protects the amenity of the rear of the adjoining properties.

Consistency with zone objectives

The subject site is zoned R2 Low Density Residential pursuant to WLEP. An assessment against the stated objectives of the zone is as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Response: The proposed seniors housing development achieves this objective as it provides for the housing needs of seniors and people with a disability 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.*

Response: N/A

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

Response: The proposed development complies with the landscaped area provisions of SEPPHSPD with the implementation of the proposed landscape regime ensuring that the development will sit within a landscaped setting that is in harmony with the natural environment of Warringah.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the R2 Low Density Residential zone and the height of building standard objective. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

The aspect or element of the development that contravenes the 2 storey rear 25% site area standard is a small portion the Unit 5 study and ensuite as shown in Figure 2, 3 and 4.

Sufficient environmental planning grounds exist to justify the variation to the height of buildings standard. Those grounds are as follows:

Ground 1

Objective 1.3(c) of the Environmental Planning and Assessment Act 1979 is:

“to promote the orderly and economic use and development of land,”

Compliance with the height of buildings standard would necessitate a reduction in the size of the Unit 5 study and ensuite significantly compromising the amenity of these spaces, and the apartment generally, without any actual or perceived change to the amenity of the rear yard areas of adjoining properties.

Strict compliance would not promote the orderly and economic use and development of land particularly in circumstances where the development complies with the “cannot refuse” FSR SEPP HSPD standard. The floor space proposed has been appropriately distributed across the site. To insist upon strict compliance would thwart this objective

Ground 2

Objective 1.3(g) of the EP&A Act is:

“to promote good design and amenity of the built environment,”

The non-compliant portion of the building is of good design as it prevents adverse amenity impacts to the rear open space areas of neighbouring properties. The 2 storey design also reflects the established character of development within the locality generally with such design representing good contextually appropriate design.

The design of the development, where located within the rear 25% area of the site, is consistent with objective 1.3(g) of the EP&A Act as it results in a contextual responsive and appropriate building that promotes good design and maintains the amenity of the built environment.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the implicit objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of building variation in this instance.

Boston Blyth Fleming Pty Limited



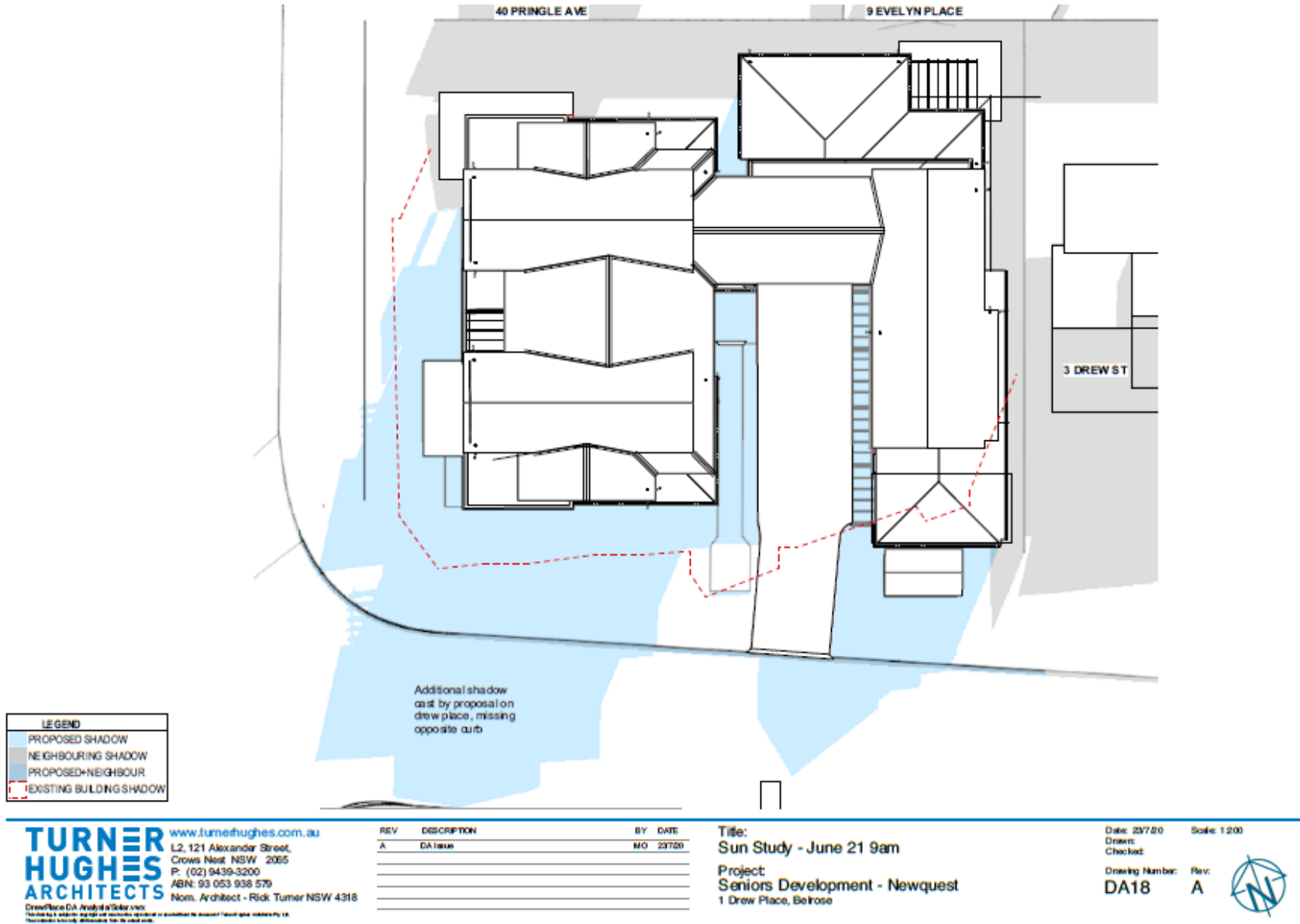
Greg Boston

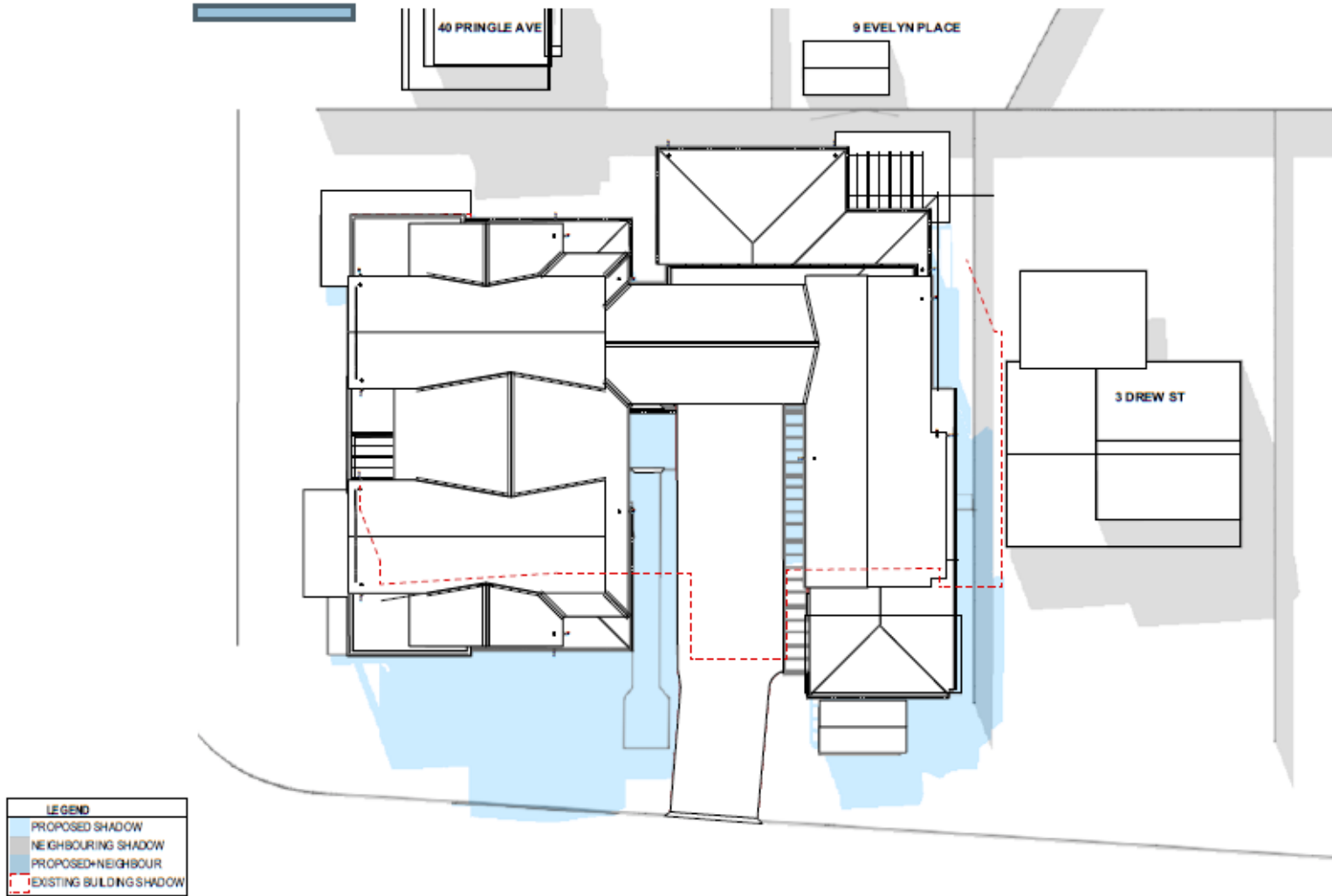
B Urb & Reg Plan (UNE) MPIA

Director

Attachment 1

Shadow diagrams





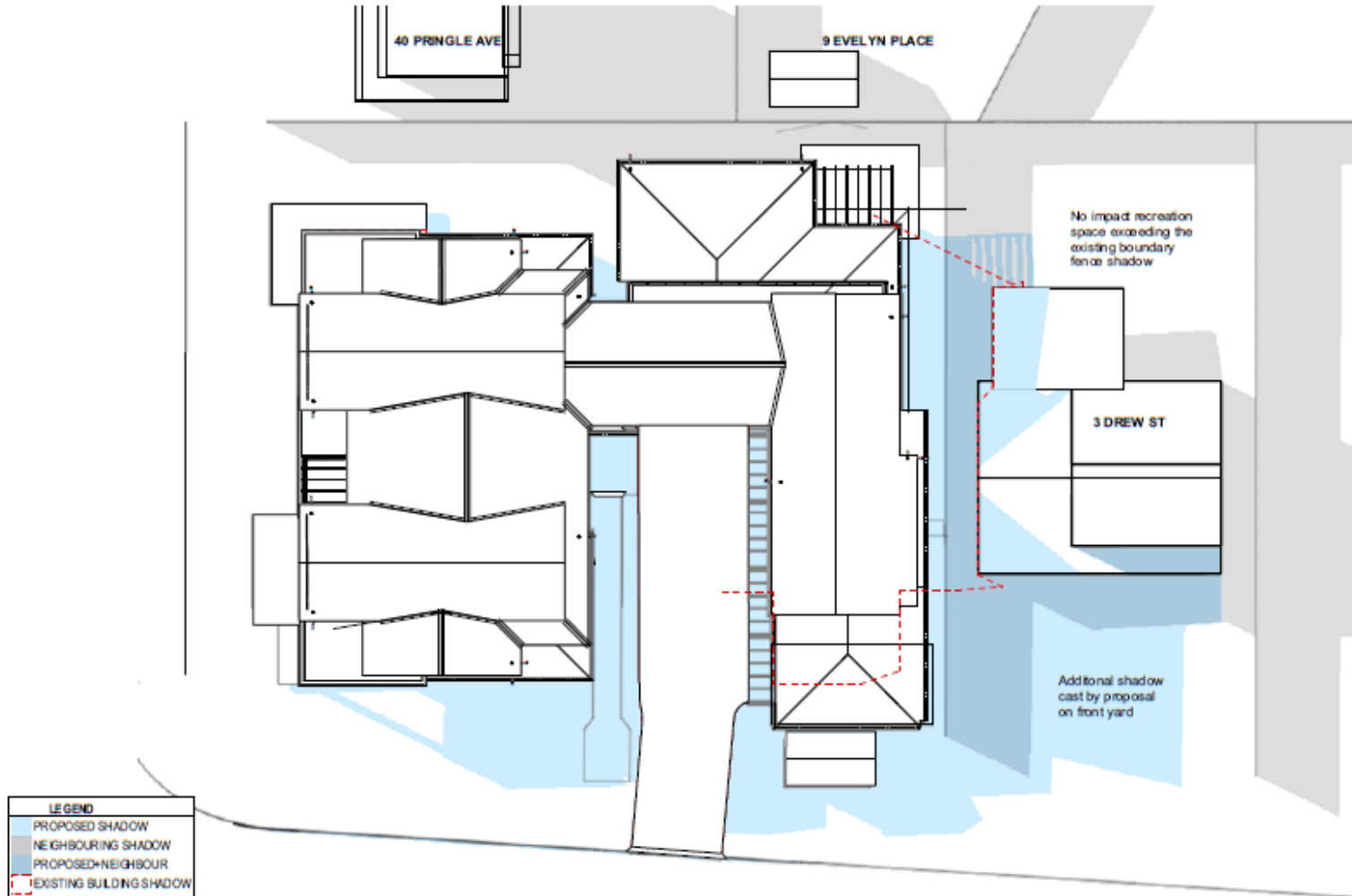
TURNER HUGHES ARCHITECTS
www.turnerhughes.com.au
 L2, 121 Alexander Street,
 Crows Nest NSW 2085
 P: (02) 9439-3200
 ABN: 93 053 938 579
 Nom. Architect - Rick Turner NSW 4318

REV	DESCRIPTION	BY	DATE
A	DA Issue	MO	23/7/20

Title:
 Sun Study - June 21 12pm
Project:
 Seniors Development - Newquest
 1 Drew Place, Belrose

Date: 23/7/20 Scale: 1:200
 Drawn:
 Checked:
 Drawing Number: DA19 Rev: A





**TURNER
HUGHES
ARCHITECTS**

Drawn/Place DA Analysis and/or other work.
This drawing is a preliminary design and is not intended to be used for construction purposes.
The information is not intended to be used for construction purposes.

www.turnerhughes.com.au
L2, 121 Alexander Street,
Crows Nest NSW 2065
P: (02) 9439-3200
ABN: 93 053 938 579
Nom. Architect - Rick Turner NSW 4318

REV	DESCRIPTION	BY	DATE
A	DA Issue	MO	23/7/20

Title:
Sun Study - June 21 3pm

Project:
Seniors Development - Newquest
1 Drew Place, Belrose

Date: 23/7/20 Scale: 1:200
Drawn:
Checked:
Drawing Number: DA20
Rev: A

