



SUPPLEMENTARY BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 28 August 2024
at 4:00pm**



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SUPPLEMENTARY ITEMS

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1 DA/114/2024 - CONSTRUCTION OF A COMMERCIAL BUILDING COMPRISING TWO HEALTH SERVICE FACILITIES AND ASSOCIATED WORKS - 939 OLD NORTHERN ROAD DURAL

DA No: DA/114/2024 (Lodged on 9 February 2024)

Description: Demolition and construction of a commercial building comprising two health service facilities and associated works.

Property: Lot 1 DP 711920, No. 939 Old Northern Road, Dural

Applicant: Bongani 2005 Pty Limited

Owner: Bongani 2005 Pty Limited

Estimated Value: \$1,320,000

Ward: A Ward

Clause 4.6 Request: HLEP Clause 6.6 in the RU5 Rural Village Zone

Submissions: Three

LPP Criteria: Proposal contravenes a development standard by more than 10%

Author: Katrina Maxwell, Senior Town Planner

COI Declaration: No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, refuse Development Application No. DA/114/2024 for demolition and construction of a commercial building comprising two health service facilities and associated works at Lot 1 DP 711920, No. 939 Old Northern Road, Dural for the reasons detailed in Attachment 1 of LPP Report No. LPP17/24.

EXECUTIVE SUMMARY

- The application involves demolition and construction of a commercial building comprising two health service facilities and associated works.
- The proposal does not comply with Clause 6.6 of Hornsby Local Environmental Plan 2013. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the Hornsby Local Environmental Plan 2013 to contravene Clause 6.6 *Restrictions on certain development* in Dural Village of Hornsby Local Environmental Plan 2013. The submission is not considered well founded and is not supported.
- The proposal does not comply with the requirements of the Hornsby Development Control Plan 2024 with regard to effluent disposal, stormwater, car parking and access.
- Between 15 February 2024 and 4 March 2024, the development application was placed on public notification. A total of two submissions have been received in objection to the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as the proposal contravenes a development standard by more than 10%.
- It is recommended that the application be refused.

BACKGROUND

Site History

Council's records indicate that from 1988 to 1997, the site was occupied by a town planning consultancy and from 1997 to 2003 the site was used for residential purposes.

On 9 December 2003, Council approved Development Application No. DA/1346/2003 for a change of use to office premises for a financial premise. There were three offices and a reception area in the premises. Six car parking spaces were required to be provided on site. The site has since reverted to a dwelling house.

On 19 January 2023, a Pre-Lodgement Meeting (PL/101/2022) was held to discuss the proposed development comprising demolition of existing dwelling and ancillary structures on the site, and construction of a new two storey building containing two tenancies consisting of 2x medical centre premises (dental practice).

Application History

On 9 February 2024, the subject development application (DA/114/2024) was lodged.

Between 12 February 2024 and 4 March 2024 the development application was placed on public notification.

On 4 March 2024, a request for additional information was sent to the applicant, requesting additional information regarding fire safety, waste management, and an acoustic report.

On 11 March 2024, additional information was received regarding acoustic requirements.

On 20 March 2024, the Applicant provided additional information regarding fire safety, waste management, and requesting an extension to providing the requested acoustic report.

On 25 March 2024, a request for information was sent to the applicant requesting that they confirm legal access, provide confirmation on the use of the premises, and provided an amended stormwater plan.

On 10 April 2024, additional information was received from the applicant regarding use of the premises, and requesting a meeting to discuss stormwater matters, however the additional information did not satisfactorily address legal access to the site.

On 12 April 2024, an amended Acoustic Report was received.

On 12 June 2024, a meeting was held with Council's Assessing Officer and Development Engineer, and the applicant to discuss the outstanding stormwater matters.

On 20 June 2024 a request for additional information was sent to the applicant, requesting the applicant provide legal vehicle access within 21 days or withdraw the development application. In the event the applicant could provide evidence of legal access within 21 days, a Clause 4.6 Variation regarding Clause 6.6 of HELP 2013 and amended stormwater drainage details would be required.

On 11 July 2024, the Applicant submitted an amended stormwater management plan, a Clause 4.6 Variation Request and amended architectural plans, however, did not provide evidence of legal access to the site.

SITE

The 793.8m² site contains a single storey dwelling house and has a frontage of 18.2 metres to Old Northern Road. Old Northern Road is a classified road under the care and control of Transport for NSW. There is a bus stop immediately in front of the site within the road reserve.

The site falls 2.37m from the front southwestern corner to the rear northeastern corner of the site (5% slope). A 2.15m wide right of carriageway is located along the northern side of the lot which burdens the subject site and benefits Lot 2 DP 711920 – 941 Old Northern Road to the rear of the subject site.

The site contains a restriction as to user (D) which states:

"No new building or other improvement of any kind or description or—whatsoever shall be erected within 15 metres of Old Northern Road without written permission of the Council of the Shire of Hornsby being firstly obtained."

The site adjoins a heritage item to south which is the former Uniting Church and chapel at 925-935 and 937 Old Northern Road Dural which is listed as Local Heritage Item No. 351 in Schedule 5 of the Hornsby Local Environmental Plan 2013. The former church site is currently operated as an art and craft gallery.

The locality is characterised by a variety of development types including two-storey commercial development, Dural Village shopping centre is opposite the site on Old Northern Road to the west, dwelling houses are located to the north and east of the site, and the former Uniting Church and Chapel building adjoins the site to the south.



Figure 1 Aerial Photo of Site (Source: Intramap)

PROPOSAL

This development proposal is for demolition of existing structures on-site commercial building comprising two health service facilities and associated works. The proposal includes parking both beneath and at the rear of the subject site. The proposal also includes new landscaping works.

The proposed two-storey health services facility includes:

- An orthodontist (medical centre) at ground floor level and
- A dentist (medical centre) at first floor level.
- There will be 3x consulting rooms at each level for each use.
- The proposal provides a total of 10 car parking spaces.

Access will be provided via an existing right-of-carriageway driveway and crossover from Old Northern Road, which will be modified/ expanded to comply with State Road restrictions.

Demolition

All existing structures on-site are to be demolished, including a dwelling house, detached shed and septic system.

The existing driveway crossover, layback, part of the pedestrian walkway and 6m of the driveway will be demolished, with the remainder of the existing right-of-carriageway/ driveway to be retained.

Construction

The ground floor level would comprise an orthodontic health service facility including three surgery/ consulting rooms, an office, a staff room, a sterilization room, reception, a storage room, an accessible toilet, lobby, lift and internal stairwell.

The first-floor level would comprise a dental surgery including three surgery/ consulting rooms, an office, a staff room, a sterilization room, an administration room, reception, waiting area, a storage room, an accessible toilet, lobby, lift and internal stairwell.

A 1.5m high freestanding signage wall would be constructed at the front of the site.

Engineering Works

The Applicant proposes modifications to vehicle crossing at the front of the site to create a new 6m wide two-way passing driveway within the road reserve. The new driveway will require existing telecommunications pit, water meter and power pole to be relocated to the south of the proposed driveway.

The proposal includes an accessible pedestrian pathway from the road reserve at Old Northern Road, including 1:20 grade ramp. A further ramp and stairs are located in the southern side setback to provide access to first floor level. A carpark at the rear of the ground floor level building will provide 10 car parking spaces, with 5 car parking spaces in the undercroft area and 5 car parking spaces beyond the building envelope. A shared zone is provided in the car parking area to enable ease of pedestrian access.

The external parts of the carpark are located below the junction for gravity-fed stormwater and are proposed to be directed to a new below ground infiltration sump, as detailed in the Stormwater Plans provided by Quantam Engineers.

It is uncertain whether the development would be connected to the existing onsite wastewater system, or whether the Applicant intends to connect the development to a Sydney Water sewer main in Old Northern Road.

Operational Details

There will be a maximum of 7 full-time staff members associated with each health service facility. Including 3x health professionals and 4x assistants/reception staff.

The proposed hours of operation are as follows:

- Monday 9:00am - 5:00pm
- Tuesday 9:00am - 7:00pm
- Wednesday 9:00am - 7:00pm
- Thursday 8:00am - 5:30pm
- Friday 8:00am - 5:00pm
- Saturday 9:00am - 1:00pm
- Sunday CLOSED

It is proposed to operate only three consulting room at any one time. The Applicant has provided advice that the two health services facilities would not be operated independently of each other. There would be a maximum of three dentists on site which includes the ground floor orthodontic clinic. A room may be prepared for the next patient whilst one dentist operates on a patient in another. It is expected that the clinic would operate at 50% capacity at any point in time, as dentists would also have consulting and surgeries in another suburb and may perform surgeries at regional dental hospitals or by appointment. The operations are managed strictly via appointment only.

Eight trees would be removed, and six trees would be impacted by the development.

Council's Employment Land Study addresses the above action through directions to create a health and social services precinct in and around the Hornsby Ku-ring-Gai Hospital. The location of the proposed health services facility in Dural would locate an incompatible land use away from the designated Hornsby health and social services precinct resulting in an isolated development removed from vital services and limiting connectivity to associated land uses. Accordingly, the proposal is inconsistent with the North District Plan and its actions for creating conditions to grow and invest in health and education precincts with appropriate services and facilities.

The proposed development would be inconsistent with "A Plan for Growing Sydney" and "North District Plan" which as a planning priority to maintain and protect rural areas. The proposal would establish a precedent for further urban scale commercial development along Old Northern Road contrary to the priority of the North District Plan to limit urban development within the Metropolitan Rural Area.

Whilst the proposed health service facility would enhance the social and economic values of the rural area, by providing employment opportunities and creating health care facilities, there are remaining outstanding environmental concerns in relation to access, car parking, stormwater and effluent disposal impacts as discussed in detail in this report.

1.2 Hornsby Shire Rural Lands Strategy

The Rural Lands Study was adopted in May 2022. The Strategy provides key principles and recommendations for managing rural lands into the future and addresses obligations for rural lands prescribed by the State Government. It will set a strategic direction for rural areas and will inform amendments to the Local Strategic Planning Statement (LSPS) and planning controls including the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2024.

The site is located within the rural village of Dural. The specific principles for Rural villages are as follows:

- *Protect and enhance the small scale and fine-grained village character of rural villages.*
- *Ensure appropriate buffer from village housing, to protect the operation of agricultural land to its optimal capacity (for example, spraying crops, dust, noise or odour emissions) Protect, maintain and enhance clearly defined green breaks around rural villages.*
- *Ensure appropriate buffer between village housing and productive agricultural activities.*
- *Locate any additional rural living opportunities in areas surrounding the villages.*
- *Preserve opportunities to locate rural service industry land uses in a district service centre such as Dural.*

While the proposed health facilities would provide important local services, the proposal is inconsistent with the character of the Dural Village by proposing health services facilities well in excess of the maximum 100m² gross floor area (138m² and 237.4m²). The result of this is a larger building footprint, and an increased car parking and traffic demand.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider "any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations".

2.1 Environmental Planning and Assessment Regulations 2021

The requirements for owners consent that form part of a development application are outlined in Clause 23 of the Environmental Planning and Assessment Regulation 2021:

- (1) *A development application may be made by—*
- (a) *the owner of the land to which the development application relates, or*
 - (b) *another person, with the written consent of the owner of the land.*

The Applicant proposes vehicular access to the site via a 3.05m wide Right of Carriageway over the adjoining property at Lot 9 DP 239830 (945 Old Northern Road). Additionally works are proposed within a 2.15m wide Right of Carriageway burdening the subject site and benefiting Lot 2 DP 711920 (941 Old Northern Road).

The subject site current does not have any legal entitlement (benefit) over the Right of Carriageway. The owner of 945 Old Northern Road has provided written correspondence to Council that they do not intend to provide any benefit to the subject site to use the Right of Carriageway. Council wrote to the Applicant on a number of occasions requesting evidence that the subject site had a benefit over the right of carriageway. Council also requested that the Applicant provide owners consent for the proposed works on the Right of Carriageway on 945 Old Northern Road.

The Applicant submitted amended plans deleting the proposed works on 945 Old Northern Road and limiting the physical works to the proposed access to the widening of a vehicle access crossing with the road reserve adjoining 945 Old Northern Road. Notwithstanding, civil engineering plans have not been provided to clarify extent of works proposed to the vehicle access crossing adjoining 945 Old Northern Road and whether works may also be required in the right-of-carriageway.

2.2 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the Hornsby Local Environmental Plan 2013 (HLEP).

2.2.1 Zoning of Land and Permissibility

The subject land is zoned RU5 Rural Village under the HLEP. The objectives of the RU5 zone are:

- *To provide for a range of land uses, services and facilities that are associated with a rural village.*
- *To provide for the housing needs of the rural community within a village environment.*
- *To permit low-scale, low-intensity development that does not unreasonably increase the demand for public infrastructure, services or facilities.*

The proposed development is defined as '*health services facilities*' (*medical centres*) and is prohibited in the RU5 Rural Village zone. However, Clause 6.6 of allows medical centres up to 100m² in the RU5 zone, where they would otherwise be prohibited.

health services facility means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following:

- a) *A medical centre.*
- b) *Community health service facilities.*
- c) *Health consulting rooms.*

- d) *Patient transport facilities, including helipads and ambulance facilities.*
- e) *Hospital.*

medical centre means premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals. It may include the ancillary provision of other health services.

With regards to the objectives of the zone, the proposed development does not benefit from legal vehicular access and therefore it is considered that the site does not have the infrastructure capacity to support the proposed development.

The proposed health services facility would result in a substantial building in scale and proportion larger than the existing building within the Dural Village area. The proposed development is essentially urban in form and use and would be inconsistent with the objectives of the RU5 zone.

2.2.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal has a maximum height of 8.4m and complies with this provision.

2.2.3 Floor Space Ratio

Clause 4.4 of the HLEP provides that the floor space ratio (FSR) for a building on any land should not exceed the maximum FSR shown for the land on the Floor Space Ratio Map. The maximum FSR for the subject site is 0.5:1. The proposal has a maximum FSR of 0.4:1 and complies with this provision.

2.2.4 Clause 6.6 Restrictions on Certain Development in Dural Village

Clause 6.6 of the HLEP provides restrictions on development of land for certain commercial uses to maintain the character and amenity of Dural Village. The objectives of Clause 6.6 are as follows:

- a) *to ensure that certain commercial land uses are low-scale and service the local community,*
- b) *to ensure that the development of land for certain commercial uses maintains the character and amenity of Dural Village.*

The clause limits sites to containing no more than three types of development including health consulting rooms, medical centres, office premises, restaurants or cafes, take away food and drink premises with the gross floor area of each development being no more than 100m².

Two health services facilities (medical centres) are proposed.

- The ground floor orthodontist would have a gross floor area of 138.6m², which is a 38.6% contravention of the development standard.
- The first-floor dental clinic would have a gross floor area of 237.4m², which is a 137% contravention of the development standard.

The development relies on a Clause 4.6 written request to contravene the floor area requirements (maximum 100m²) of Clause 6.6 of the HLEP.

Legal advice was prepared by Apex Law (dated 10 February 2023) on behalf of the Applicant regarding whether a written request pursuant to clause 4.6 of the HLEP is required and summarised:

Irrespective of the apparent internal inconsistency within the HLEP, we consider that clause 2.60 of the SEPP prevails and health services facilities are permissible with consent in the RU5 zone. In our opinion, the correct interpretation of the inconsistency between clause 2.60 of the SEPP which permits the Proposed Development without a gross floor area restriction and clause 6.6 of the HLEP which purports to impose such a restriction is to be determined by the SEPP prevailing over the HLEP to the extent of that inconsistency. In our opinion:

- (a) *the proposed development is permissible with consent pursuant to clause 2.60 of the SEPP; and*
- (b) *the DA does not need to be accompanied by a clause 4.6 written request as the Proposed Development does not propose a contravention of an applicable development standard.*

Council has reviewed the legal advice provided by Apex Legal dated 10 February 2023, and is of the opinion that State Environmental Planning Policy (Transport and Infrastructure) 2021 does not override the requirement to comply with Clause 6.6 of the HLEP. Clause 6.6 Restrictions on certain development in Dural Village of the HLEP is a development standard that must be considered. Therefore, a Clause 4.6 written request to contravene a development standard was requested.

Subsequently, a Clause 4.6 Request to Vary a Development Standard was prepared by Chapman Planning Pty Ltd (dated 11 July 2024) in support of this development application, which is discussed below.

2.2.5 Exceptions to Development Standards

The application has been assessed against the requirements of Clause 4.6 of the HLEP. This clause provides flexibility in the application of the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tender to hinder the attainment of the objectives of the zone.

The proposal exceeds the maximum 100m² maximum floor area requirement for health consulting rooms and medical centres pursuant to Clause 6.6(3) Restrictions on certain development in Dural Village of HLEP.

The objectives of this clause are as follows:

- (a) *to ensure that certain commercial land uses are low-scale and service the local community,*
- (b) *to ensure that the development of land for certain commercial uses maintains the character and amenity of Dural Village.*

The intent of Clause 6.6 is to permit services to the community which would otherwise be prohibited land uses in the RU5 zone. By limiting the gross floor area of commercial uses in the Dural Village, the rural village can maintain its unique rural character and amenity, and development of an urban scale can be avoided. The Dural Village Masterplan identifies that “*the area requires special attention to create its own identity or “sense of place” and that “a rural theme should be established”*”.

The applicant has made a submission in support of the contravention to the development standard in accordance with Clause 4.6 of the HLEP. Clause 4.6 provides that 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.*

Council must be satisfied that the written request provided by the applicant under Clause 4.6 addresses both the unreasonable and unnecessary test and demonstrates sufficient environmental planning grounds to justify contravening the development standard. These matters are discussed below.

2.2.5.1 Unreasonable or Unnecessary Clause 4.6(3)(a)

There are five common methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the development. Initially proposed for objections under clause 6 of SEPP 1 in the decision of *Wehbe v Pittwater Council [2007]* NSWLEC 827 Pearson C summarised and applied these methods to written requests made under Clause 4.6 in *Four2Five Pty Ltd v Ashfield Council [2015]* NSWLEC 1009 [61-62]. These five methods are generally as follows:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose is not relevant to the development.
- That the objective would be defeated or thwarted if compliance was required.
- That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard.
- The zoning of the land is unreasonable or inappropriate.

It is not required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The written request prepared by Chapman Planning Pty Ltd, dated 11 July 2024 provides a detailed assessment of the proposal with respect to the development standard sought to be contravened. The request argues that:

- *The development proposal is in the public interest because it assists the relocation of the dental practice from 644 Old Northern Road to the subject site ensuring that the dental practice can continue to service the community. The development proposal meets the objectives for development within the RU5 - Village Zone as addressed within the Statement of Environmental Effects submitted with the development application.*
- *The public benefit of maintaining the development standard is not considered significant because the proposed use is permitted with consent on the subject site pursuant to Clause 2.60 of SEPP - Transport and Infrastructure 2021 noting RU5 - Village Zone is a prescribed zone. Strict application of the clause would prevent the provision of a medical centre of an appropriate scale on the site noting the equipment requirements to facilitate such a use.*
- *The maximum floor area restriction only applies to land uses specified in clause 6.6(2) of the HLEP, noting that the land use table permits a range of alternative land uses that are not subject to a maximum gross floor area. Application of a maximum floor area standard to this specific land use which is confirmed by subconsultant reports as being appropriate for the subject site within the village zone, would be unreasonable and inconsistent with the objects*

of the Act, given the array of land uses permitted in the zone which are not subject to size restrictions.

- *Dural Village is located within two Local Government Areas with Old Northern Road acting as a border between The Hills LGA and Hornsby LGA. Clause 6.6 of the HLEP only applies to land within Hornsby LGA, being the eastern side of Old Northern Road. It would be unreasonable to enforce a development standard that restricts size of specific uses within Dural Village to maintain character and amenity of the Village, if the standard is not applicable for the entire village, or all permitted commercial like uses within the Village.*
- *The design of the medical centre and the exceedance of the gross floor area development standard under Clause 6.6(3) is limited to the specific circumstances of the development proposal. Whilst the use as a total exceeds the maximum GFA requirements the supporting subconsultant reports detail that the scale and intensity of the use is consistent with the existing dental practice operating with the Dural Village and the additional floor area associated with the use is the result of the design of the centre in accordance with updated access and equipment requirements to facilitate the continuation of the business within the community.*

Council notes that the objectives of Clause 6.6 of the HLEP are as follows:

- a) to ensure that certain commercial land uses are low-scale and service the local community,*
- b) to ensure that the development of land for certain commercial uses maintains the character and amenity of Dural Village.*

With reference to the reasoning provided by the applicant above, Council does not support the conclusion that the proposed health services facility meets the objectives of Clause 6.6 for the following reasons:

- Clause 6.6 allows for certain commercial land uses such as health services facilities with the Dural Village Centre which would otherwise be prohibited under the HLEP.
- Clause 2.60 of the Transport and Infrastructure SEPP does not override Clause 6.6 of HLEP. Council has reviewed the legal advice provided by Apex Legal dated 10 February 2023. Council is of the opinion that Clause 6.6 Restrictions on certain development in Dural Village of the HLEP is a development standard that must be considered.

SEPP (Transport and Infrastructure) 2021 prevails against the HLEP to the extent of any inconsistency. However, health services facilities are permissible in the RU5 – Rural Village Zone under both SEPP (Transport and Infrastructure) 2021 and HLEP 2013. Further, there are no development standards such as floor space ratio, maximum gross floor area, or site coverage within the SEPP. Therefore Clause 6.6 of the HLEP is not inconsistent with any development standard within the SEPP. Therefore, both SEPP (Transport and Infrastructure) 2021 and HLEP 2013 would apply to this development and must be considered.

- It is considered that the proposed development would be contrary to the objectives of Clause 4.6 of the HLEP as there are insufficient environmental planning grounds to justify contravening the development standard and therefore proposal is not in the public interest.
- The intent of limiting the floor area of health services facilities/medical centres to avoid medical super clinics which would be incongruent with the character and amenity of the RU5 Rural Village Zone.

- Both development types proposed under this development application contravene the development standard. The Applicant has not attempted to provide any component of the development that is compliant with the development standard.
- Since the gazettal of the HLEP, neither Council (under delegation) nor the Hornsby Local Planning Panel been approved a development application for the purpose of a health consulting room, medical centre, office, restaurant, café or take away food premise which relies on a Clause 4.6 written request. The only exceptions to this were developments that benefited from existing use rights. Therefore, the development standard has not been virtually abandoned or destroyed by the Council's own actions in departing from the standard.

For the reasons outlined above, it is considered that the written request to contravene the development standard for maximum gross floor area in Clause 6.6(3)(b) has not adequately demonstrated that the objectives of Clause 6.6 of the HLEP are achieved.

2.2.5.2 Environmental Planning Grounds - Clause 4.6(3)(b)

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist it must be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (summarised from *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

The applicant provided the following planning grounds for the contravention of the development standard:

- *Clause 6.6 provides restrictions on certain development in Dural Village within Hornsby LGA being specific to land zoned RU5 - Village within Dural on the eastern side of Old Northern Road. The development proposal including the exceedance of the maximum gross floor area standard has been developed as a specific response to assist the relocation of the existing Dural Dental Practice to facilitate the provision of an upgraded dental practice that continues to assist and service the local community, being a direct response to achieving the objectives of this development standard. The design of the medical centre being related to the relocation of an existing medical centre in the Dural Village is an environmental planning ground, specific to the circumstances of this development application.*
- *The design of the building containing one type of use being 2 x medical centre tenancies is located within the built form expected for redevelopment of this site, notwithstanding the numerical variation. The development proposal is supported by Acoustic and Traffic Reports demonstrating that the additional gross floor area beyond that envisaged by the control will not result in additional amenity impacts on Dural Village. There are no adverse amenity impacts arising from the breach of the gross floor area development standard. This is a recognised environmental planning ground. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at 34.*
- *The design of the building readily absorbs the additional gross floor area within the curtilage of an expected building envelope on the site in accordance with the planning controls. The supporting subconsultant reports demonstrate that the use will not result in any additional amenity impacts therefore the development proposal itself, whilst presenting a contravention to the standard demonstrates, that the site and context can accommodate the size of the tenancies.*

- *The development proposal including the contravention to the gross floor area standard is consistent with the following aims of the Hornsby LEP 2013 found at clause 1.2(2):*
 - *(2)(a)(i) The development proposal assists the longevity of the Dural Dentist Practice providing an upgraded centre that meets current equipment and access requirements continuing to serve the Dural local area.*
 - *(2)(e)(ii) The development proposed has been designed within the expected built form envisaged by the Hornsby Development Control Plan. The design of the building with two tenancies whilst varying the gross floor area controls for the tenancies is comfortably accommodated within a built form that sits comfortably within the Dural streetscape.*
- *The contravention to the gross floor area standard is consistent with the following objects of the Environmental Planning and Assessment Act, 1979 as follows:*
 - *1.3(c) - The proposal is an orderly and economic use of the site with the variation to gross floor area accommodating a functional medical centre use that can has appropriate facilities meeting equipment requirements for the use and providing a low scale use that continues to service the community without resulting in unreasonable amenity impacts beyond that expected for the zone.*
 - *1.3(g) - The contravention to the standard presents a good design outcome for the development, allowing two times medical centre tenancies located within a built form consistent with the operational intensity of the existing dental clinic located opposite the subject the site within the Dural locality*

Council considers that the environmental planning grounds stated within the written request are insufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed development and the circumstances of the development site. It is therefore considered that the written request does not demonstrate compliance with the clause and is unacceptable in this regard.

- There are no site-based constraints which would warrant a contravention to the development standards on environmental planning grounds. The contravention does not occur to aid in avoidance of environmental harm, such as the protection of trees and vegetation, or to reduce landform modification.
- The proposed car parking does not meet the minimum car parking rate under the HDCP. This could be remedied by reducing the number of consulting rooms, or alternatively reducing the footprint of the building to provide additional site area for car parking.
- The development relies on vehicle access via a right of carriageway on an adjoining site of which the subject site does not have legal access over. All vehicular access should be provided on site. The application has not demonstrated that this can be achieved.
- Other non-compliances with the HDCP, that result from the excessive built form include insufficient landscaping, a non-compliant front setback and a variation to the southern side setback control.

In demonstrating the unreasonable and unnecessary test, the applicant provided insufficient environmental planning grounds with respect to the site and the surrounding constraints.

Council is therefore not satisfied that Clause 4.6(3)(b) of the HLEP is adequately addressed.

Local Planning Panels constituted under the *Environmental Planning and Assessment Act 1979* exercise consent authority functions on behalf of a Council and are not delegates of Council. Therefore, Local Planning Panels may determine a development application notwithstanding, a numerical non-compliance in excess of 10%.

The exceedance of the 100m² maximum gross floor area development standard under Clause 6.6 of the HLEP is unfounded in this instance.

2.2.6 Suspension of covenants, agreements and instruments

Clause 1.9A of the HLEP sets out the requirements for suspension of covenants, agreements and instruments and states:

- (1) *For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.*
- (2) *This clause does not apply—*
 - (a) *to a covenant imposed by the Council or that the Council requires to be imposed.*

Development would be in the 15m restriction as to user (D) as follows:

“No new building or other improvement of any kind or description or—whatsoever shall be erected within 15 metres of Old Northern Road without written permission of the Council of the Shire of Hornsby being firstly obtained.

The building would be setback 5.3m from the front boundary with Old Northern Road. A pedestrian ramp would be also located within the front setback.

When the development application for subdivision creating the subject allotment was approved on 13 July 1984, the site was zoned Part Residential A1 and Part Roadside Reserve. The portion of the site zoned Roadside Reserve ran across the first 15m of the site. Therefore, the Restriction to User 15m wide was created to align with this zone boundary. It was noted that the existing dwelling houses fronting Old Northern Road encroached within this zone boundary. Therefore, the intent of this restriction to user was to ensure further dwelling houses or other buildings were constructed within the Residential A1 portion of the site. However, the entire site is currently zoned RU5 Rural Village under the HLEP and therefore the health services facility is permissible within the entirety of the site.

Further, the site is in proximity to the intersection of Galston Road and Old Northern Road. Reference was made in The Dural Village Centre Plan (circa 1991) which states that new buildings along Galston Road have been developed in accordance with a setback provision of 30m from the street alignment and include a 15m roadside reserve which provides space for a service road to the properties and rationalises the number of access points to the road. The roundabout and setbacks are still present on the “Dural Village Management (Figure 2)” in Part 2.3 Village Masterplans of the HDCP.

Transport for NSW previously had plans to continue to widen Old Northern Road to four lanes from Quarry Road to Galston Road, Dural. A previous proposal also included a roundabout at the intersection of Old Northern Road and Galston Road. Council’s Strategic Land Use Planning Team were consulted and provided advice that it is unlikely that a future road widening of Old Northern Road would occur in this fashion. The site is not identified in the Land Reservation Acquisition Map

under the HLEP. This development application was referred to Transport for NSW who did not advise Council of any current road widening proposals affecting the site.

Accordingly, Council has no objection to the suspension of the Restriction as to user for the purpose of assessing this development application.

2.2.7 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item and is not located in a heritage conservation area.

However, the property is adjacent to No. 925-935 and 937 Old Northern Road which includes heritage item No. 351 - House, former Uniting Church and Chapel listed under Schedule 5 (Environmental Heritage) of the HLEP.

The property is also located in the general vicinity of the following heritage items and archaeological sites listed within the HLEP:

- Item No. 349 (House) - No.873 Old Northern Road, Dural.
- Item No. 352 (St Jude's Anglican Church and grounds) - No.951-965 Old Northern Road, Dural.
- Item No. A38 (Cemetery) - No.885-887 Old Northern Road, Dural.
- Item No. A39 (St Jude's Anglican Church and grounds) - No.951-965 Old Northern Road, Dural.

The property is also located adjacent Archaeological Site No. A12 - Old Northern Road listed under Schedule 5 (Environmental Heritage) of The Hills Local Environmental Plan 2019 (THLEP).

The property is not listed as a heritage item itself or located within a heritage conservation area (HCA).

Council's heritage assessment advises that the adjacent heritage item (No. 351) is locally significant for conserving a good example of a late Victorian period gothic style church and a Federation period dwelling. Their physical connection with Old Northern Road and visual prominence in the rural village is a key historic feature and contributory element of sites' heritage significance.

The adjacent archaeological site (No. A12 under THLEP) is locally significant for being the alignment of the formerly known Great North Road and for the archaeological potential to provide evidence of the convict built civil engineering project constructed in the early 1800s.

The proposal seeks to construct a commercial building orientated to Old Northern Road. The new building orientation is typical for the streetscape and the building form/style combining traditional and contemporary elements with an asymmetrical front façade, wrap front veranda, low hipped roof, balanced windows, and front feature window awning. The materials include metal roof sheeting, face-brick base course and weatherboard cladding in light and grey colour tones.

Development within the vicinity of a heritage item is required to be sympathetic to the heritage significance and setting of nearby heritage items. If the development application were to be approved, Council would request additional information to ensure the historic and public domain views, and adequate space is provided to allow for interpretation of the adjacent heritage items are retained, minor amendments and further information would be requested for the proposal to meet the objectives of Part 9.4.1 of the HDCP.

- *The front setback be increased to approximately 8m from the front boundary and comply with the setback pattern line between the adjacent residential dwellings located at Nos. 945 Old Northern Road and 925-935 Old Northern Road.*

The Dural Village Masterplan (Part 2.3 of the HDCP) also identifies the need to maintain views to the former church.

However, if the building was to be setback 8m from the front boundary a substantial redesign would be required to reduce the building footprint and retain the rear car parking area. The Applicant has demonstrated the impact on the adjoining property to the rear, car parking and stormwater management if the building was setback further from the front setback and closer to the rear boundary.

Council is not satisfied that the proposal complies with Clause 5.10 of the HLEP and Part 9.3.4 Development in the vicinity of heritage of HDCP, however given the recommendation for refusal amended plans have not been requested to further address Clause 5.10 of the HLEP and Part 9.3.4 of the HDCP.

2.2.8 Earthworks

The objective of Clause 6.2 Earthworks of the HLEP is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The site has a slope of 5%. The application proposes excavation associated with the construction of the driveway and building footprint. It is understood that only shallow excavations are required for the proposed driveway connection. Minor fill would be required for the construction of any new fill foundation platforms and road subgrades. As the topography falls towards the rear of the site excavation depth reduces with some fill being proposed for the rear of the site to create a level building platform. Minor landscaping work is also proposed.

A Geotechnical Report has been prepared by Fortify Geotech (dated October 2023) in support of the development application.

Earthworks are minimal and are limited to the building footings and driveway. Council's Development Engineer has reviewed the proposal and raised no objections to the proposed earthworks.

The proposal generally complies with Clause 6.3 Earthworks of the HLEP and is considered acceptable.

2.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

The application has been assessed against the requirements of Division 10 and Division 17 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

2.3.1 Division 10 - Health Services Facilities

Health services facilities (medical centres) are permissible with consent under Transport and Infrastructure SEPP in the RU5 Rural Village zone as a prescribed zone.

Division 10 Health Services Facilities of the Transport and Infrastructure SEPP permits any person to carry out development for the purposes of a health services facility with consent in the RU5 Rural Village zone. Clause 4 of Division 10 of the SEPP provides that nothing in this clause prevents a

consent authority from “*refusing to grant consent for development by reference to the consent authority’s own assessment of the compatibility of the development with the surrounding land uses*”.

There are no development standards for development application for a health services facility under Division 10 of Transport and Infrastructure SEPP and as such the development standards under the HLEP and development controls under the HDCP apply.

It is considered that the proposed medical centre is generally incompatible with the surrounding development given the non-compliance with development standard under HLEP restricting the size of health services facilities in the Dural Village Area.

The HDCP provides planning controls for the construction of a community use (including health services facilities and an assessment of the development against these controls is provided in Part 2.8 of this report.

The proposal is inconsistent with Division 10 Health Services Facilities of Transport and Infrastructure SEPP.

2.3.2 Frontage to a Classified Road

Old Northern Road is a classified State arterial road under the jurisdiction of Transport for NSW (TfNSW).

The application is subject to assessment under Section 2.119 of the SEPP given the proposal has a frontage to a classified road being Old Northern Road and the application has been referred to Transport for NSW for concurrence.

Section 2.119(2) of the Policy states:

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Regarding Section 2.119(2)(a), vehicle access to the site via an alternative road, other than a classified road is not feasible. The Applicant has also advised that access to the development from Old Northern Road is not feasible. The site does not currently benefit from use of the right of carriageway, and owner’s consent has not been granted for vehicle access to the site via the right of carriageway on 945 Old Northern Road.

Regarding Section 2.119(2)b, the applicant has not satisfactorily demonstrated that the design of vehicle access to site would not adversely affect the operation of the classified road. The Applicant has also failed to demonstrate that the proposed method of stormwater disposal would not affect the operation of the classified road.

Regarding Section 2.119(2)c, the development is not of a type that is not sensitive to traffic noise or vehicle emissions.

While Transport for NSW does not object to the proposed development, no legal point of vehicle access to the site has been established. Support of Council's Traffic engineers to the proposal was conditional on establishing a legal right of access over the right of carriageway. As no legal point of vehicle access vis Old Northern Road or via an alternative access has been established, it is considered that development does not comply with Section 2.119 of the Transport and Infrastructure SEPP.

2.4 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.4.1 Chapter 6 Water Catchments

The site is located within the catchment of the Hawkesbury-Nepean River. The aim of this chapter is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of development are considered in the regional context. Chapter 6 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would not impact on the water quality of the catchment and would comply with the requirements of chapter 6 of the Biodiversity and Conservation SEPP.

2.5 State Environmental Planning Policy (Resilience and Hazards) 2021

The application has been assessed against the requirements of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

2.5.1 Chapter 4 Remediation of Land

Section 4.6 of the Resilience and Hazard SEPP states that consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

A Hazardous Material Survey Report was prepared by EnviroX Consulting. Council's environmental review of the submitted information raised no objection to the proposed development.

Furthermore, an examination of Council's records and aerial photography has determined that the site has been historically used for residential purposes. It is not likely that the site has experienced any

significant contamination, and further assessment under Chapter 4 of the Resilience and Hazards SEPP is not required.

2.6 State Environmental Planning Policy (Industry and Employment) 2021

The application has been assessed against the requirements of Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021.

2.6.1 Advertising and Signage

The proposed signage has been assessed against the requirements of Chapter 3 of the Industry and Employment SEPP. This Policy provides State-wide planning controls for advertising signs and prevails over other environmental planning instruments including the HLEP and the HDCP. The aims of the Policy are to ensure that advertising and signage is compatible with the desired amenity and visual character of an area, to provide effective communication in suitable locations and to ensure signage is of high-quality design and finish.

Old Northern Road is a classified road and therefore the Transport Corridor Outdoor Advertising and Signage Guidelines apply to this site.

A 1.5m high freestanding signage wall would be constructed at the front of the site. However, no details of the content nor illumination of the sign were provided. If Council were of a mind to approve the development application, additional information regarding the content, design and illumination of the signage would have been requested.

2.7 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.8 Hornsby Development Control Plan 2024

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2024 (HDCP). The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP – Part 2 Rural			
Control	Proposal	Requirement	Complies
Size Area		N/A	N/A
Building Height	8.4m	8.5m	Yes

No. of storeys	2 storeys	2 storeys +	Yes
Site Coverage (450m ² -899m ²)	34%	max. 50%	Yes
FSR	0.47:1	0.5:1	Yes
Landscaped Area (600m ² -899m ²)	28.7%	30%	No
Setbacks			
- <i>Front (for properties 925-945 Old Northern Road)</i>	5.35m	6m	No
- <i>Side (north)</i>			
- <i>Ground Floor</i>	3m	0.9m	Yes
- <i>First Floor</i>	3m	1.5m	Yes
- <i>Side (south)</i>			
- <i>Ground Floor</i>	0.4m	0.9m	No
- <i>First Floor</i>	3.3m	1.5m	Yes
- <i>Rear</i>			
- <i>Ground Floor</i>	18.7m	3m	Yes
- <i>First Floor</i>	13.6m	8m	Yes
- <i>Carparking Area</i>			
- <i>Side setback</i>	0.6m	3m	No
- <i>Rear setback</i>	3m	3m	Yes
Car Parking	10 spaces	18 spaces	No

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As detailed in the above table, there are a number of non-compliances with the HDCP controls which are discussed below including a brief discussion on compliance with relevant performance requirements.

2.8.1 Village Masterplans

The desired outcome of Part 2.3.1 Village Masterplans - General is “*orderly development that is consistent with the principles in the village masterplans*”. This desired outcome is supported by prescriptive controls that:

- *Development should be designed to embody the urban design guidelines and principles of the relevant village masterplans.*
- *Vehicular access should be rationalised in accordance with the relevant masterplan.*
- *Public domain works and pedestrian thoroughfares should be provided in accordance with the relevant masterplan.*

Appropriate vehicular access has not been established as part of this development application. No public domain works are proposed as part of this development application.

2.8.2 Scale

The Desired Outcome of Part 2.4.1 Dural Village Scale of HDCP is “*Development with a height, bulk and scale that is compatible with the character and amenity of the Village Centre*”.

The prescriptive measures outline that within Dural Village, the scale and site coverage controls outlined in Part 2.4 of the HDCP are applicable.

Part 2.4 of the HDCP prescribes that the scale of buildings is restricted by the maximum building height for the land as prescribed within the HLEP. The maximum permissible height for the subject site is 8.5m. The proposal has a maximum height of 8.4m and complies with this provision.

- *Low pitched roofs with wide eaves should be encouraged for compatibility with streetscape character and sun control.*
- *The roof should have a maximum pitch of 35 degrees, except if a steeper roof pitch is more consistent with the existing character of the locality.*
- *Any attic level is to be contained wholly within the roof space.*
- *The external walls of the building should not extend above the attic floor level.*

The proposal complies with the height controls of Part 2.4.1 Dural Village Scale of the HDCP. The height complies with the 8.5m height requirement. The roof has a pitch of less than 35 degrees.

However, the proposal is inconsistent with the desired outcomes pertaining to bulk and scale of the HDCP. The proposed development would have a site coverage of 34% and a further 39% of the site would be impervious surfaces such as the car park, leaving only 28.7% of the site available for landscaping.

The proposal exceeds the maximum 100m² per health services facility permitted under Clause 6.6 of the HLEP. This is contrary to the bulk and scale of medical centres envisioned for the Dural Village Centre.

Therefore, the proposal is inconsistent with the desired outcomes of Part 2.4.1 Dural Village Scale of the HDCP.

2.8.3 Setbacks (Dural Village)

The desired outcomes Part 2.4.2 Setbacks of the HDCP are to encourage “*setbacks that are compatible with adjacent development and complement the streetscape*” and “*setbacks that allow for canopy trees to be retained and planted along the front and rear property boundaries*”. These desired outcomes are supported by prescriptive controls that require:

- 6m front setback (for properties 925-945 Old Northern Road).
- 1.5m side setback.
- 3m rear setback to the ground floor.
- 8m rear setback to the first floor.
- 3m from side and rear boundary to the carparking area.

2.8.3.1 Front Setback

The minimum front setback requirement is 6m. It is proposed to set the building back 5.35m from the front boundary.

The Applicant has provided the following justification to the building setback encroachment.

“the variation to the front setback control ensures the built form aligns with the adjoining development, including a heritage listed item which is unlikely to be demolished”.

Council’s Heritage assessment recommends that front setback be increased to approximately 8m from the front boundary and comply with the setback pattern line between the adjacent residential dwellings located at Nos. 945 Old Northern Road and 925-935 Old Northern Road. Further, the Dural Village Masterplan (Part 2.3 of HDCP) identifies the need to develop sites in a way that maintains views to the former church on 937 Old Northern Road.

2.8.3.2 Side Setbacks

The minimum ground floor side setback is 900mm. The entry ramp is proposed to be setback 400mm from the southern side boundary. However, stairs to the ground floor of the building are permitted to encroach into setbacks. Therefore, this encroachment is considered acceptable.

Part 2.4.7 of the HDCP requires car parking areas for commercial uses are to be setback 3m from side and rear boundaries. The carparking area encroaches on both side setbacks and therefore does not comply with this control. The carpark would be setback 1.7m from the northern boundary and would be setback from the southern boundary 600mm. The proposed side setbacks reduce the opportunity for landscaping which would otherwise provide visual and acoustic privacy to adjoining properties. Along the northern side boundary adjacent to the carpark, the existing turf would be maintained, however no other landscaping is proposed.

The proposal is contrary desired outcomes Part 2.4.2 Setbacks of the HDCP as the proposed setbacks are incompatible with the adjacent development. It is considered that the views to the former church on 937 Old Northern Road would be obstructed by the proposed front setback.

2.8.4 Design Details (Dural Village)

The desired outcome of Part 2.4.8 of the HDCP is to encourage *“development compatible with a low-density residential environment that complements the zone objectives”.*

This desired outcome is supported by Prescriptive Measures that:

- a) *Development should embody the urban design principles in the Dural Village Masterplan.*
- b) *Buildings should be oriented primarily towards the street and the rear boundary.*
- c) *Extensive blank or unarticulated walls to street frontages are discouraged.*
- d) *Dwelling houses should provide a covered entry to the home at least 1.5 metres deep and clearly visible from the street.*
- e) *Buildings on corner allotments should be designed to provide elevations that address both street frontages.*
- f) *Garages should not dominate the facade of a building nor the streetscape.*
- g) *The colours, textures and materials used in external finishes should be consistent with a heritage theme.*

The proponent has submitted Architectural Plans and Landscape Plans.

The Statement of Heritage Impact by Three+ One Heritage (dated 1 February 2024) provides commentary on the proposed design of the building.

The new building will be constructed with face brick masonry to the lower section of the ground floor walls, with weatherboard-clad walls above and a metal sheet clad roof.

The new building will be constructed with face brick masonry to the lower section of the ground floor walls, with weatherboard-clad walls above and a metal sheet clad roof with a traditional hipped form. These materials are common along the immediate section of the Old Northern Road and will ensure the new structure does not visually detract from the nearby heritage items.

The main entry is proposed to be located on the southern side of the proposed building, however windows along the front façade and the proposed access ramp provide as traditional street frontage.

The proposal generally complies with desired outcomes of Part 2.4.8 Design Details (Dural Village) of the HDCP and is acceptable in this regard.

2.8.5 Landscaping

The desired outcome of Part 2.4.3 Landscaping of the HDCP encourages “*landscaping that integrates the built form with the locality and enhances the tree canopy*” and “*landscaping that is consistent with the visual landscape in the rural area*”.

Prescribed controls under Part 2.4.3 include a minimum landscaped area of 30% of the site. The proposed development provides for 28.7% of the site to be landscaped. The variation to the landscaping requirements is considered minor and the landscape plan includes screen planting to soften the visual impact of building, carparks and roads, to improve the aesthetic quality of the development and to screen undesired elements and is considered acceptable.

A 1.8m high timber lapped and capped fence is proposed along the southern side boundary and rear eastern boundary. However, no fence can be erected along the northern side boundary due to the location of the Right of Carriageway. 23 Lilly Pillies to a height of up to 4m are proposed along the northern side of the proposed building.

The proposal generally complies with the desired outcomes of Part 2.4.3 Landscaping of the HDCP and is considered acceptable.

2.8.6 Privacy, Security and Sunlight

Part 7.1.6 of the HDCP provides planning controls for privacy, sunlight and security aspects of developments that are located within residential areas. These aspects are discussed in detail below:

2.8.6.1 Privacy

The prescriptive control for privacy under Part 7.1.6 of HDCP is “*for development at the interface of a commercial area and a residential area, development should encourage views from the commercial area to the horizon rather than downward onto residential areas*”.

The Applicant has provided the following privacy details.

- *Windows at the northern elevation encourage views of the horizon. Ground level windows are associated with surgery rooms, with a direct line of sight to residences being obscured by virtue of subject site elevation above adjoining properties. First floor level northern windows are located at waiting room and reception areas. Those rooms are commonly associated with seated persons, with the dominant view positions being (internally) low and resultant sight lines therefore directed upwards towards the horizon. The windows on northern façade are further set back by the access handle which adjoins the subject site.*

- *Windows at the eastern elevation look towards screen planting which obscures the view of the neighbouring residential premises at 941 Old Northern Road. Further, first floor windows at the eastern elevation are associated with a staff room and sterilisation room, which are not considered to be high use areas.*
- *Ensuring that windows encourage views of the horizon rather than direct line of sight to adjacent residential dwellings.*
- *Using screen planting where possible*

Most of the windows on the first floor of northern elevation are narrow vertical windows which reduce opportunities for overlooking to adjoining properties. One larger window is proposed on the first floor to the lobby stairwell. This window is in alignment with a master bedroom and ensuite of the dwelling house at 945 Old Northern Road. As the facility would not be operational at night, privacy to an adjoining property's bedroom is not a significant privacy concern. However, if the development application were to be approved, a condition should be placed on the consent requiring the provision of translucent glass or similar to the stairwell window.

A 1.8m high timber fence is proposed along the rear and southern side boundaries. This would provide privacy to the adjoining properties from the rear car park, as well as shielding the adjoining site at the rear from the obtrusive impact of vehicle headlights in the carpark. However, as the building is built up the fence would not provide privacy to the proposed building. The first floor of the building is setback 13.6m and this is considered sufficient to provide privacy to the dwelling house at the rear. The property to the south of the site is a commercial property currently screened by trees which are taller than the proposed building.

The rear car park faces at single storey dwelling house at 941 Old Northern Road, with a master bedroom, entry and lounge on the eastern western elevation facing the subject site. The proposed 1.8m high timber boundary fence would provide sufficient privacy screening the residential property to the rear. The building is setback 18.9 metres from the rear boundary which complies with the prescriptive controls of HDCP in respect to visual privacy.

2.8.6.2 Security

The prescriptive controls pertaining to security under Part 7.1.6 of HDCP are:

- *"Identify safe, clear and direct pedestrian and cyclist entrance to the building/s from the primary street frontage.*
- *Windows and lobbies should be designed and oriented to overlook the street and communal open spaces on the site".*

The main entrance to the building is along the southern elevation. However, the pedestrian ramp would clearly direct visitors to the main entrance. Windows to the ground floor staff room and Surgery Room 1 provide casual surveillance of the street. On the first floor the admin room would provide casual surveillance to the street however the other window on the first floor is to a storeroom and therefore this room would not provide any surveillance opportunities.

2.8.6.3 Sunlight

The prescriptive control regarding sunlight under Part 7.1.6 is as follows:

On 22 June, 50% of the required principal private open space on any adjoining residential property should receive 2 hours of unobstructed solar access between 9am and 3pm.

The subject site is immediately north of a former church and chapel currently operating as an arts and craft gallery (“Dural Galleries”). The applicant provided shadow diagrams demonstrating that small portion of the northern side of the neighbouring site to the south would be always overshadowed between 9am and 3pm on 22 June.

However, as this the art gallery is not a residential property and is overshadowed by existing trees which are taller than the proposed building, the proposed overshadowing is considered acceptable in this instance. Further This area most likely serves as an access for maintenance rather than an open space, public or entertaining area. Windows along the northern side of the art gallery building would likely experience overshadowing from the proposed building at 9am on 22 June, however the overshadowing would dissipate by 12pm.

The proposal generally complies with the desired outcomes of Part 7.1.6 Privacy, Security and Sunlight of the HDCP and is considered acceptable.

2.8.7 Tree and Vegetation Preservation

Part 1.2.6 Tree and Vegetation Preservation of HDCP applies to this development application.

An Arboricultural Impact Assessment was prepared by Bellevue Tree Consultants (dated 21 July 2022). All trees on the site would be removed by the development. Trees 10,12 and 13 are wholly and partially within the footprint of the proposed development. Trees 6, 7, 8, 9 and 11 are exempt tree species.

The current proposal will result in the removal of 3 trees numbered T10, T12 and T13. Whilst tree loss is not ideal, there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity.

Trees numbered T6, T7, T8, T9 and T11 are exempt from needing a permit for removal under Part 1.2.6 of the HDCP.

Subject to conditions, the proposal complies with Part 1.2.6 Tree and Vegetation Preservation of HDCP and is considered acceptable.

2.8.8 Biodiversity

The desired outcomes of Part 1.3.1.1 of HDCP are “*Development that provides for the conservation of biodiversity including threatened species and populations, endangered ecological communities, remnant indigenous trees, regionally and locally significant terrestrial and aquatic vegetation*” and “*Development that maintains habitat for native wildlife and wildlife corridors to provide for the movement of Populations of threatened flora species, habitat 10m for threatened species, locally significant bushland, groups of remnant indigenous trees fauna species*”.

The vegetation in this area has not been surveyed and due to its proximity to mapped Sydney Turpentine Ironbark Forest the site has been included in Council’s Natural Resource mapping as, somewhat of a precautionary approach.

The majority of the trees to be removed are cocos palms and privet (exempt) and 1 magnolia grandiflora (non-native) however three pittosporums are to be removed which are native. The proposal has been assessed by Council’s Tree Management Officer and is considered acceptable.

The proposal generally complies with the desired outcomes of Part 1.3.1.1 of HDCP and is considered acceptable.

2.8.9 Stormwater Disposal

The desired outcomes of Part 1.3.1.2 Stormwater Management of HDCP are to ensure “*development that protects waterways from erosion, pollution and sedimentation, and maintains or improves water quality and aquatic habitats*” and “*water management systems that minimise the effects of flooding and maintains natural environmental flows*”.

These desired outcomes are supported by prescriptive controls that “*Stormwater should be gravity drained to Council’s drainage system, which may require inter- allotment drainage*” and “*On non-urban properties, development should not prevent or significantly alter water flows to adjoining properties or natural ecosystems. Flows from impervious areas should be dispersed on-site to minimise erosion and impacts on adjoining properties*”.

The proposal originally proposed a charged stormwater system. Part 1.3.1.2f of the HDCP generally only supports gravity drained systems. Council requested that the applicant negotiate a drainage easement over downstream properties. Further, the Applicant was advised that the development should be designed to Q50 post development outflow.

Council subsequently requested that the applicant negotiate a drainage easement over downstream properties. The Applicant advised that creating easement(s) over downstream sites is not feasible and most likely to be refused by downstream owners.

A meeting was held with Council and the Applicant. Given the limitations of providing an easement or gravity fed drainage, it was agreed they that the proposed charged stormwater system is acceptable subject to the applicant providing civil engineering details regarding, an onsite detention system (OSD) designed to 50yr ARI storm event, Hydraulic grade line modelling analysis and infiltration trench modelling.

Amended civil engineering plans were provided by quantum engineers (dated 8 July 2024) in support of this development application. Most of the stormwater issues associated with this proposal have now been resolved.

However, there is still a component of the stormwater management which has not been sufficiently addressed. Hydraulic grade line (HGL) modelling was completed, however did not take into consideration any likely stormwater flows from Old Northern Road into the new kerb inlet pit. To accurately model the hydraulic grade line analysis, the model needs to include the anticipated stormwater flows from Old Northern Road.

The intent of the hydraulic grade analysis to ensure if the new kerb inlet pit surcharges, the water from Old Northern Road does not spill back into pit SP5 within the property boundary.

If Council were to consider approving this development application, additional hydraulic grade line modelling would be required.

The proposal does not comply with the desired outcomes of Part 1.3.1.2 Stormwater Management of HDCP as it cannot be demonstrated that the stormwater management system minimises the effects of flooding or maintains natural environmental flows.

2.8.10 Vehicular Access and Parking

The desired outcomes of Part 1.3.2.1 Transport and Parking of HDCP are “*Development that manages transport demand around transit nodes to encourage public transport usage*”, “*Car parking and bicycle facilities that meet the requirements of future occupants and their visitors*” and “*Development with simple, safe and direct vehicular access*”.

Part 2.4.7 Vehicle Access and Parking (Dural Village) of the HDCP includes the desired outcome encouraging “*development that provides sufficient and convenient parking for residents with vehicular access that is simple, safe and direct.*” and the following prescriptive controls:

- a. *The number of existing accessways should be rationalised where possible.*
- b. *Car parking should be provided behind the front building line for all land uses.*
- c. *Parking for commercial uses should also be setback a minimum of 3 metres from the side and rear property boundaries and the area landscaped with screening shrubs.*
- d. *A paved driveway should be provided between the required on-site car parking area and a public road.*

2.8.10.1 Car Parking

Prescriptive controls relating to transport and parking are contained within Part 1.3.2.1 Transport and Parking of the HDCP.

Part 1.3.2.1 of the HDCP requires that the car parking rate for a Health Consulting Rooms is spaces 3 per surgery in medical centres the car parking rate is 4 carparking spaces per surgery. There is a total of six consulting rooms proposed, resulting a car parking demand of 18 car parking spaces, whereas only 10 parking spaces are proposed on site. This is a shortfall of 8 car parking spaces. This is a 44% variation to the required carparking demand.

However, the Traffic Assessment (Varga Traffic Planning Pty Ltd (dated 9 January 2024)) submitted with the development application assumes only 3 consulting rooms will be occupied at any one time. It is understood that the ground floor would be an orthodontist service and the first floor would be operated as a dental service. 3 health professionals and 4 assistants/reception staff would be associated with the health service facility at any one time.

The Applicant has not nominated when each consulting rooms would be operated. However given the recommendation for refusal, this information has not been requested.

To allow the vehicles (including delivery vehicles) to turn in and out of carparking spaces and exit the site in forward direction an additional turning bay may be required. This may result in converting one parking space to a dedicated turning bay. If Council were of a mind to approve this development, additional swept path would have been required to demonstrate manoeuvring in and out of the rear carpark, prior to the determination of the development application. If a car parking space was required to be deleted to facilitate a turning bay, this would result in a total car parking short fall of nine car parking spaces (50% of the required car parking under Part 1.3.2.1 of the HDCP).

There are no opportunities for overflow for on-street car parking on Old Northern Road. There is a bus stop immediately in front of the site, and no parking permitted for 380m to the north of the site and 200m to the south of the site, restricting the opportunity for on-street car parking. This may contribute to amenity impacts to adjoining properties.

2.8.10.2 Traffic

The Traffic and Parking Assessment Report (Varga Traffic Planning Pty Ltd dated 9 January 2024) estimated the projected future traffic generation for the dental clinic assuming only 3 consulting rooms are in use at any one time resulting in a total traffic generation potential of 9 vehicle trips per hour.

2.8.10.3 Vehicle Access (Right of Carriageway)

The occupants of the subject site currently access the site via the ROC over 945 Old Northern Road with a gravel parking area/turning end informally constructed at the front of the subject site. This is an informal arrangement as the site does not currently have a legal benefit over the ROC.

The development application initially proposed access to the site via a right of carriageway over Lot 9 DP 239830 (945 Old Northern Road). It has been established that neither the subject site, nor Lot 2 behind the subject site have any legal benefit over this right of carriageway.

The Applicant has acknowledged that the present legal situation is that without access from Lot 9, Lots 1 (subject site) and 2 do not have legal access to the street, they are technically landlocked with no street access and therefore non-compliant to Council requirements.

Council has obtained the deposited plans, 88B Instruments and Certificates of Title for both DP 71190 (subject site) and DP 239830 (adjoining site with ROC), which confirms there is no legal access to the subject site via the ROC.

While one option to resolve the issue could be to construct a driveway to Lot 1 (subject site) directly off Old Northern Rd, there is a bus stop (with bus clearances requirements) at the frontage of the site. This would also not resolve the access issues to Lot 2, located directly behind the subject site. Further, additional vehicle access onto a classified road may not be supported by Transport for NSW.

Owners' consent from Lot 9 (945 Old Northern Road) was initially required to rebuild the front of the existing driveway. The development application could not be determined without this owners' consent. However, the Applicant demonstrated that the proposed works for the new driveway and crossover can be restricted to the public domain and Lot 1 site only, and avoid works to Lot 9, negating the need for owner's consent from Lot 9 (945 Old Northern Road).

Despite no longer needing owners' consent for works on 945 Old Northern Road, the subject site still does not have legal access over this right of carriageway and therefore owners' consent is still required from all parties currently benefitting from the ROC (being Lot 9) and Lot 3 (943 Old Northern Road).

The applicant is currently pursuing agreement with the owner of the benefitting Lots to establish legal access. However, due to the lengthy time this process is likely to take, Council requested the development application be withdrawn until such time as legal access was established. The Applicant provided advice that would not be withdrawing their development application.

Therefore, Council cannot support the development in its current form as it does not comply with the desired outcomes of Part 1.3.2.1 Transport and Parking of HDCP as it does not allow for safe, simple and direct vehicle access and does not meet the prescriptive control for on-site car parking.

2.8.11 Waste Management

The desired outcomes of Part 1.3.2.3 Waste Management of HDCP are to encourage "*development that maximises re-use and recycling of building materials*" and "*waste storage and collection facilities that are designed to encourage recycling, located and designed to be compatible with the streetscape, accessible, clean and safe for users and collectors*". These desired outcomes are supported by prescriptive controls requiring that "*a Waste Management Plan should be prepared in accordance with Council guidelines and submitted with the development application, to address demolition and construction waste*".

A Waste Management Plan was prepared by Anthony Vavayis and Associates Pty Limited (dated 27 September 2023).

Council's Waste Management Officer initially raised concerns regarding the Waste Management Plan initially prepared by Anthony Vavayis and Associates Pty Limited (dated 27 September 2023). An amended waste management plan was subsequently submitted. Council's Waste Management Officer assessed the amended waste management plan and found it to be satisfactory.

It is proposed for waste to be collected kerbside on a weekly basis. Therefore, waste trucks would not be entering the site.

The proposal complies with desired outcomes of Part 1.3.2.3 Waste Management of HDCP and is considered acceptable.

2.8.12 Noise and Vibration

The desired outcome of Part 1.3.2.5 Noise and Vibration of the HDCP is to ensure "*development designed and managed to minimise noise and vibration impacts on the occupants of residential dwellings and other noise sensitive land uses.*"

This desired outcome is supported by prescriptive controls for Noise Generating Development that state:

- *Development should be sited and designed so that noise is kept to a minimum and does not create offensive noise as defined by the Protection of the Environment Operations Act 1997.*
- *Noise generating developments should be accompanied by an acoustic report that demonstrates the development is sited and designed to minimise the effect of noise and vibration on surrounding sensitive land uses and comply with relevant State Government and Council guidelines.*
- *The location and design of noise generating activities, such as loading and unloading areas, garbage collection areas, driveways, parking areas, active recreation areas, air conditioning or mechanical plants, should be sited away from adjacent sensitive land uses and/or screened by walls or other acoustic treatments.*
- *In addition to physical noise mitigation measures, noise impact management measures should be used to further limit potential noise impacts on sensitive land uses such as scheduled times to undertake noise generating activities and/or use of noise generating machinery, and reasonable hours of operation including delivery hours.*

An acoustic report prepared by PKA Acoustic Consulting, dated 12 April 2024 was submitted in support of the application.

While vehicles using the car park has the potential to generate noise, there is likely to a maximum 9 vehicle movements an hour which is considered acceptable. Although it is noted that the reduced side setbacks to car parking area may contribute to a loss in acoustic privacy.

The proposed health service facility would operate no earlier than 8am Monday to Friday and no earlier than 9am on Saturday. The facility would close no later than 7pm Monday to Friday and no later than 1pm on Saturday. The facility would be closed on Sunday. Therefore, the premises would not generate unreasonable noise during night-time or early morning hours. The proposed hours of operation are considered to be appropriate in the rural village context.

If development application were to be approved a condition of consent would require a mechanical plant noise assessment to be undertaken by a suitably qualified Acoustic Consultant prior to the issue of the construction certificate.

The acoustic report was reviewed by Council's Environmental Protection Team and found to be sufficient subject to conditions to achieve and maintain acoustic compliance.

The proposal generally complies with the desired outcomes of Part 1.3.2.5 Noise and Vibration of the HDCP and is considered acceptable.

2.8.13 Effluent Disposal

The desired outcome of Part 1.3.2.4 Effluent Disposal of HDCP is to ensure that *"sewerage is disposed of in a manner that minimises impacts on the natural and built environment and public health"*.

This desired outcome is supported by the prescriptive control that *"areas that are not serviced by the Sydney Water reticulated sewerage system are required to dispose of wastewater using a NSW Health Department accredited Sewage Management Facility"*.

The site is not connected to reticulated sewerage infrastructure provided by Sydney Water. A sewer main is present in Old Northern Road, however there is no current sewer connection to site.

An Approval to Operate Onsite Sewerage Management System was issued on 4 July 2024 for a Primary Septic / Pump Out system. All properties on the eastern side of Old Northern Road/Galston Road for a distance of 150m to the north and south of the site are serviced by an onsite wastewater system and/or pump out.

The development application is silent on the proposed method of wastewater disposal. If the development intended to rely on the existing septic / pump out system, a report would be required to be prepared by a wastewater consultant to demonstrate that the proposed development would be adequately serviced by the proposed system.

The proposed carpark would be in the location of the existing septic tanks. The existing septic tanks would need to be relocated. No details of the re-location of the septic tanks have been provided.

There is no certainty that Sydney Water would approve connection to reticulated sewer or that the existing on-site wastewater system is capable of accommodating the load from the proposed health services facility. The applicant has failed to demonstrate that the development has access to essential utility services and the site is suitable for the proposed development.

Further, concurrence from Transport for NSW would also be required for any proposed sewerage infrastructure works within the subject verge, road reserve, or that would impact on the operation and condition of Old Northern Road.

Consequently, as the applicant has not provided details of a suitable on-site wastewater system prepared by a qualified wastewater consultant prior as part of this development application, Council is unable to support this development application.

The proposal is inconsistent with the desired outcome of Part 1C.2.4 Effluent Disposal of the HDCP and is considered unacceptable.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider *"the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*.

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

The proposed development would necessitate the removal of eight trees from the site. Six trees would on adjoining properties would potentially be impacted by the development.

Whilst tree loss is not ideal, there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity.

It is considered that the removal of the trees is acceptable in the circumstances of the case due to describe

3.1.2 Stormwater Management

The site slopes down 2.37m from Old Northern Road. Notwithstanding, the hydraulic engineers report demonstrates that collected stormwater from the roof and paved areas can be drained to Old Northern Road. However, the stormwater modelling submitted with this development application fails to adequately address the stormwater flows from Old Northern Road onto the site. Insufficient information has been provided to verify that, the water from Old Northern Road would not flow back into a stormwater pit within the property boundary. If stormwater were to flow back into the pit, this could potential cause this pit to surcharge stormwater onto the property in an uncontrolled manner.

3.2 Built Environment

3.2.1 Built Form

The scale and proportion of the proposed built form would be considerably larger than the surrounding built environment and inconsistent with the rural character of the site and surrounding land, given the contravention to the maximum floor area control of 100m² per health services facility, and reduced landscaping opportunities.

3.2.2 Traffic

A traffic and parking assessment has been submitted with the proposal which estimates that the proposed development would generate an additional 9 vehicle trips per hour providing only three consulting rooms are in use at any one time.

A number of public submissions raise concerns regarding lack of car parking for the development, and the increase in traffic generation/congestion on Old Northern Road and surrounding streets.

Council's traffic engineering assessment of the traffic impacts of the development concludes that this is a relatively small traffic generation on the surrounding road network, however the impact on the proposed access has not been addressed.

3.3 Social Impacts

The proposed health services facility would provide health services to the Dural community and therefore the development would make a positive social contribution to the local community by improving oral health. The development has been designed to provide accessibility for the elderly and persons with a disability.

There would be a number of multiplier effects that the development would provide throughout the local and regional economies. These multiplier effects would result from the sourcing of goods and services from suppliers to businesses within the complex as well as the increased consumption generated by the increase of employment in the area.

3.4 Economic Impacts

The proposal would have a positive impact on the local economy with the potential to generate an increase in demand for local services. Economic and employment opportunities would be generated during the operation of the site, as well as providing secondary opportunities for business stimulation of the local Dural Village area.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider *“the suitability of the site for the development”*.

The Applicant has not adequately demonstrated that the site is suitable for accommodating the proposed development as no legal vehicle access is provided.

5. PUBLIC PARTICIPATION



Section 4.15(1)(d) of the Act requires Council to consider *“any submissions made in accordance with this Act”*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 12 February 2024 and 4 March 2024 in accordance with the Hornsby Community Engagement Plan. During this period, Council received two submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<p>X SUBMISSIONS RECEIVED</p>	 <p>PROPERTY SUBJECT OF DEVELOPMENT</p>	
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ITEM 1

Two submissions objected to the development, generally on the grounds that the development would result in:

- Unauthorised use of the Right of Carriageway on 945 Old Northern Road.
- Traffic on the Right of Carriageway on 945 Old Northern Road.
- Obstruction of the Right of Carriageway on the subject site.
- Traffic on Old Northern Road
- The Location of the existing bus stop
- Whether the provisions of the SEPP or HLEP prevail.
- Insufficient car parking
- Questions regarding the sewer and stormwater drainage serving the site.
- Dural Village Masterplan
- Size and Scale of Development.
- Excessive Noise
- Side Setbacks

The merits of the matters raised in community submissions have been addressed in the body of the report with the exception of the following:

5.1.1 Right of Carriageway

Right of Carriageway (ROC) at 945 Old Northern Road

One submission raised objection to the use of the Right of Carriageway (ROC) burdening the adjoining property at 945 Old Northern Road. This objector raises concerns that the subject site does not have the benefit of legal access over this right of carriageway. Further concerns are raised regarding the rights and responsibilities of affected parties in the event of damage or an accident. Concerns are raised regarding increased/ commercial traffic on the Right of Carriageway. If parking occurs on the ROC, it would restrict access to other properties.

Council requested that the Applicant provide evidence that the site benefits from the ROC on 945 Old Northern Road or can be serviced by an alternative point of vehicle access. The applicant has not demonstrated that the development has legal vehicular access to the site.

Right of Carriageway on Subject Site.

One objector raises concerns regarding the 2.15m wide ROC burdening the subject site and benefitting the site at the rear (941 Old Northern Road) and the potential interference with services such as electricity, water and sewer within the right of Carriageway.

5.1.2 Traffic

Traffic on the right of carriageway will detrimentally affect the enjoyment and property value of other properties which currently have a benefit over the ROC.

The Traffic and Parking Assessment Report has calculated traffic generation on a first principles bases assuming only 3 surgeries will be occupied at any one time. This assessment has given a traffic generation of 9 vehicle trips per hour. The Traffic Engineering Team accepts that this is a relatively small traffic generation on the surrounding road network, however the impact on the proposed access has not been addressed.

Traffic issues have been discussed in detail in Sections 2.8.10 and 3.2.2 of this report. Some of the traffic issues raised are existing situations and not a result of this development.

5.1.3 Location of Bus Stop

Concern was raised in the objections regarding the location of the existing Bus Stop at the frontage of the site. The location of the bus stop sees buses queuing up along Old Northern Road blocking driveways and causing sight distance issues. A submission has included numerous photos of buses stopped across the driveway for extended periods of time. The photos also show delivery vehicles stopped on the access driveway. Taking these issues into account it is recommended that the driveway be widened to 5.5m to allow for two-way traffic movements and allow for queuing when necessary.

This is an existing issue and there is no evidence that this situation would worsen as a result of this development application.

It is acceptable for buses to drop off/ pick up passengers while stopped across the driveway. However it is not acceptable for vehicle to park across the driveway. This is a matter for Council's Traffic Rangers to police.

5.1.4 Permissibility

An objector has not sited Applicant's legal advice and as such cannot comment on whether the SEPP or HLEP prevail. Council has reviewed the legal advice by Apex Law dated 10 February 2023 and 13 February 2023 and concluded that the permissibility of health services facilities under the Transport and Infrastructure SEPP does not negate the requirement to comply with Clause 6.6 Restrictions on certain development in Dural Village of the HLEP.

5.1.5 Car Parking

One objection raises questions regarding car parking and that the facility is likely to operate more than three consulting rooms at any one time inflating the car parking demand for the site. The potential result of inadequate on-site carparking is that patrons may attempt to park on Old Northern Road. The proposed passing bay at the frontage of the right of carriageway is not sufficient in size and would result in vehicles queuing on Old Northern Road.

Should the development application be approved, a condition of consent would require a maximum of three consulting rooms to be in operation concurrently at any time.

5.1.6 Infrastructure Servicing

One objection raises questions regarding the sewer and stormwater drainage serving the site. A rising sewer main is available in Old Northern Road. Should the development application be approved, additional information would be required regarding either the capacity and relocation of the

existing septic tank, or alternatively confirmation that the site could connect to the reticulated sewer main.

Most of the issues initially identified regarding stormwater have now been resolved, however the potential overland flow from Old Northern Road on to the site has not been sufficiently addressed.

5.1.7 Dural Village Masterplan

An objector contends that the development should be designed to fit within the objectives of the Dural Village Masterplan as it is too big and obstructive, which in turn would block views of the heritage listed former church. It is agreed that an objective of the Dural Village Masterplan is develop sites in a way that maintains views to the former church on 937 Old Northern Road. This has also been reinforced in the assessment of this development application by Council's Heritage Planner.

5.1.8 Noise

An objection was raised regarding potential excessive noise from air conditioners and the impact on shift workers residing adjacent to the site.

Council's assessment of the acoustic report concludes, if the development application was recommended for approval, compliance with recommendations to achieve and maintain acoustic compliance the proposal would have ensured appropriate acoustic attenuation.

5.1.9 Setbacks

One submission raises concerns that the 5m setback to the side boundary has not been adhered to. The setback requirements of Part 2.4.2 Setbacks of the HDCP apply in this instance. The minimum side setback requirement is 900mm to the ground floor and 1.5m to the first floor. The development complies with the side setback requirement to the Northern boundary. A variation to the southern side boundary setback occurs due to location of the access ramp. As this boundary does not adjoin a residential proposal, this variation with the setback control would not warrant refusal of the development application.

5.2 Public Agencies

The development application was referred to the following Agency for comment:

5.2.1 Transport for NSW

The development application was referred to Transport for NSW for concurrence under Clause 2.119 of the Transport and Infrastructure SEPP and Section 138 of the *Roads Act 1993*.

The architectural plans, Traffic and Parking Assessment Report, and the two public submissions were referred to Transport for NSW. Transport for NSW provided correspondence dated 5 March 2024 that they had no objection to the proposal subject to compliance with the recommended conditions of concurrence.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider "*the public interest*".

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is not considered to have satisfactorily addressed Council's and relevant agencies' criteria and is likely to have an adverse impact to the community. The applicant has not satisfactorily demonstrated that the site is serviced by vehicle access, stormwater disposal and wastewater disposal, which is likely to contribute to amenity and environmental impacts for adjoining properties and old Northern Road. Accordingly, it is considered that the approval of the proposed development would not be in the public interest.

7. CONCLUSION

The application proposes demolition of a dwelling house and construction of a commercial building comprising two health service facilities and associated works. The proposed development does not comply with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2024 having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Council received two submissions during the public notification period. The matters raised have been addressed in the body of the report.







Having regard to the circumstances of the case, refusal of the application is recommended.

Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

CASSANDRA WILLIAMS
Major Development Manager - Development
Assessments
Planning and Compliance Division

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Draft Reasons for Refusal
2.  Clause 4.6 Written Request
3.  Architectural Plans
4.  Landscape Plan
5.  Legal Advice
6.  Addendum to Legal Advice

File Reference: DA/114/2024

Document Number: D08925412

Reasons for Refusal

1. The proposed development is unsatisfactory with respect to section 4.15(1)(a)(i) of the *Environmental Planning and Assessment 1979* as it does not comply with the following environmental planning instruments.
 - 1.1 Legal vehicular access has not been provided over Lot 9 DP239830, 945 Old Northern Road.
 - 1.2 The proposal does not comply the objectives of the RU5 Rural Village zone of Hornsby Local Environmental Plan 2013 as it cannot be demonstrated that the site does not unreasonably increase the demand for public infrastructure as:
 - a. The site is not adequately serviced by legal vehicle access
 - b. The proposal provides insufficient on-site car parking.
 - c. Insufficient technical information has been submitted to confirm that the development can be appropriately connected to a reticulated sewerage main or suitable on-site wastewater system.
 - d. Insufficient technical information has been submitted to confirm that the development would be served by an appropriate stormwater management system without impacting Old Northern Road.
2. The request to contravene a development standard pursuant to Clause 4.6 Exceptions to Development Standards of Hornsby Local Environmental Plan 2013 is considered unreasonable and unnecessary.
 - 2.1 The proposal does not comply with the maximum floor area requirement under Clause 6.6 Restrictions on certain development in Dural Village of Hornsby Local Environmental Plan 2013.
3. The proposed development is unsatisfactory with respect to section 4.15(1)(a)(iii) of the *environmental planning and assessment act 1979* as the proposal does not comply with the Hornsby Development Control Plan 2024 on the following grounds:
 - 3.1 The proposal does not comply with the desired outcomes of Part 1.3.1.2 Stormwater Management of the Hornsby Development Control Plan 2024 as it cannot be demonstrated that the stormwater management system minimises the effects of flooding or maintains natural environmental flows.
 - 3.2 The proposal does not meet the desired outcomes of Part 1.3.2.1 Transport and Parking of the Hornsby Development Control Plan 2024 as sufficient information has not been provided to demonstrate that vehicular access is provided to the proposed development.
 - 3.3 The proposal does not comply with the prescriptive controls of Part 1.3.2.1 Transport and Parking of the Hornsby Development Control Plan 2024 as the proposed on-site car parking insufficient.
 - 3.4 Insufficient technical information has been submitted to demonstrate that the development complies with Part 1.3.2.4 Effluent Disposal of the Hornsby Development Control Plan 2024.

- 3.5 The proposal is inconsistent with the desired outcome of Part 2.4.7 Vehicle Access and Parking (Dural Village) of the Hornsby Development Control Plan 2024 as it has not been demonstrated that vehicle access to the site would be simple, safe and direct, or that the required on-site car parking has been provided.
4. In accordance with section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the site is not considered suitable for the development as the applicant has not demonstrated that the site is suitability serviced by appropriate vehicular access.
5. In accordance with section 4.15(1)(b) the *Environmental Planning and Assessment Act 1979*, insufficient technical information to enable a proper assessment of the impact on the built and natural environment of the application in respect to the following matters:
 - 5.1 Car parking
 - 5.2 Vehicular Access
 - 5.3 Stormwater
 - 5.4 Effluent Disposal
6. In accordance with section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of the development would not be in the public interest.

DRAFT

ATTACHMENT 1 - ITEM 1

Chapman Planning Pty LtdSuite 8/88 Mountain Street
ULTIMO NSW 2007Phone: 9560 1718
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11 July 2024

Clause 4.6 Request to Development Standard

Property Description:	939 Old Northern Road
Development:	2 x Health Services Facilities
Development Standard:	Clause 6.6(3) Restrictions on certain development in Dural Village

Introduction

This development application relates to the construction of a purpose built development containing 2 x Health Services Facilities and associated works. The proposed two storey health services facility includes an orthodontist (medical centre) at ground floor level and a dentist (medical centre) at first floor level.

The subject site is located within the RU5 – Village zone under Hornsby Local Environmental Plan 2013 (**HLEP**). The proposed health service facilities are permitted with consent under Clause 2.60 of State Environmental Planning Policy (Transport and Infrastructure) 2021, noting the RU5 – Village zone is identified as a prescribed zone.

Clause 6.6 of the HLEP - *Restrictions on certain development in Dural Village*, applies to the development application noting the application includes 2 x medical centres located within the RU5 Village zone within Dural. The clause relevant to this clause 4.6 request is provided as follows:

(2) *This clause applies to development comprising any one or more of the following types of development on land in Zone RU5 Village—*

- (a) *health consulting rooms,*
- (b) medical centres,**
- (c) *office premises,*
- (d) *restaurants or cafes,*
- (e) *take away food and drink premises.*

(3) *Development consent must not be granted for development to which this clause applies unless—*

- (a) *the development will result in each lot on which the development is located being used for no more than 3 types of development referred to in subclause (2), and*
- (b) the development comprises a maximum gross floor area of 100 square metres for each type of development referred to in subclause (2).**

Pre Development Application advice from Hornsby Council indicated that clause 6.6 of the HLEP is a prohibition. Accordingly, the development application was lodged with legal advice provided by Apex Law providing the following with regard to the permissibility of Health Services Facilities and the application of clause 6.6.

*Clause 6.6 is unusual in that it appears to make certain purposes of development which are otherwise not specified in the Land Use Table (being **health consulting rooms and medical centres**) permissible with consent but subject to a restriction in terms of a maximum gross floor area of 100 square metres.*

[...]

*Irrespective of the apparent internal inconsistency within the LEP, we consider that clause 2.60 of the SEPP prevails and **health services facilities** are permissible with consent in the RU5 zone. In our opinion, the correct interpretation of the inconsistency between clause 2.60 of the SEPP which permits the Proposed Development without a gross floor area restriction and clause 6.6 of the HLEP which purports to impose such a restriction is to be determined by the SEPP prevailing over the HLEP to the extent of that inconsistency.*

Further to Councils Request for additional information dated 20 June 2024, it is understood Councils internal legal position on the application of clause 6.6 has changed and that this clause is a development standard. Notwithstanding the legal advice submitted with this application, this clause 4.6 request is provided with abundant caution to address the contravention of the standard.

Under the Hornsby Local Environmental Plan 2013 (**HLEP**), clause 4.6 allows for the making of a written request for the flexible application of a development standard to permit the granting of development consent for a development even though it would contravene a development standard imposed by that instrument.

The proposed development includes a ground floor of 117.4m² containing an orthodontist (medical centre) and a first floor level of 220.8m² containing a dentist (medical centre).

The development proposal meets clause 6.6(3)(a) of the HLEP with both of the proposed tenancies being classified as medical centres, and therefore providing one type of development referred to in Clause 6.6(2).

Noting both tenancies are contained within one purpose built development, the total gross floor area attributed to the medical centre use would extend to include the common lobby areas and would therefore be the total gross floor area of the building.

The total GFA of the building is 395m², presenting a contravention of 295m² and 295% to the maximum 100m² standard contained within clause 6.6(3)(b) of the HLEP.

The fundamental role of clause 4.6 in any local environmental plan is reflected in the recent decision of Commissioner Clay in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In particular, Commissioner Clay notes at [73] of his decision that:

“First, it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.”

The objectives of clause 4.6 facilitate the flexible application of development standards to particular development in order to achieve an improved environmental planning outcome.

This request has been prepared having regard to the Department of Planning and Environment’s Guidelines to Varying Development Standards (November 2023) and various relevant decisions in the Land and Environment Court and Court of Appeal of NSW.

The request to contravene the development standard for the floor space ratio has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130
7. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the proposed development consistent with the objectives of the development standard which is not met?
2. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a))
3. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant’s written request to vary the development standard is well founded? (cl 4.6(3)(b))

The public interest test has been removed from Clause 4.6. Consistency with the objectives of the land use zone are a consideration under section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act and has been addressed within the Statement of Environmental Effects submitted with the development application.

Notwithstanding, the application is submitted as part of the relocation of the Dural Dental Practice from Level 1, 644 Old Northern Road (opposite), to a purpose built development at the subject site. The relocation will ensure the Dental Practice can continue to provide a service to the local community, whilst being upgraded to meet equipment and access requirements.

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a) of the LEP, the contravention to the maximum gross floor area development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unnecessary because the proposed development is consistent with the objectives of the standard, notwithstanding non-compliance with the standard.

• Objectives of maximum gross floor area development standard

The objectives of the development standard are at clause 6.6(1) of the LEP as follows:

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that certain commercial land uses are low-scale and service the local community,*
 - (b) *to ensure that the development of land for certain commercial uses maintains the character and amenity of Dural Village.*

The proposed development meets the objectives of Clause 6.6 of the LEP based on the following assessment:

Objective (a) – The development application is submitted as part of the relocation of the Dural Dental Practice from Level 1, 644 Old Northern Road being opposite the subject site. The proposed development application is a purpose built development ensuring that the existing dental practice will continue to provide a service to the local community whilst being upgraded to meet equipment and access requirements.

The proposed built form has been designed within the curtilage of a building consistent with that envisaged by the Hornsby Council DCP controls. The application is supported by a Traffic Report and Acoustic Report detailing that whilst the size of the medical centre use on this site exceeds the development standard the land use is indeed low scale and will not impact the amenity of the dwellings to the north and east of the site and is compatible with the low scale commercial uses in the vicinity of the site.

Objective (b) – As addressed the relocation of the Dural Dental Practice to the subject site is contained within a built form that is of the expected envelope for commercial uses within the Dural Village. The design of the medical centres within the proposed building does not erode the character of the village with the floor area of the uses appropriately integrated within the expected built form for development of this site within the Dural Village.

The maximum floor area restriction only applies to land uses specified in clause 6.6(2), noting that the land use table permits a range of alternative land uses that are not subject to a maximum gross floor area. Contravention of this control for the specific circumstances of this development application will not alter the character of the village.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 the development meets the first test because compliance with a development standard is unnecessary as the objectives of the development standard are achieved notwithstanding the non-compliance.

Furthermore, it is unreasonable to require compliance with the development standard due to the following reasons:

- The development proposal is in the public interest because it assists the relocation of the dental practice from 644 Old Northern Road to the subject site ensuring that the dental practice can continue to service the community. The development proposal meets the objectives for development within the RU5 – Village Zone as addressed within the Statement of Environmental Effects submitted with the development application.
- The public benefit of maintaining the development standard is not considered significant because the proposed use is permitted with consent on the subject site pursuant to Clause 2.60 of SEPP – Transport and Infrastructure 2021 noting RU5 – Village Zone is a prescribed zone. Strict application of the clause would prevent the provision of a medical centre of an appropriate scale on the site noting the equipment requirements to facilitate such a use.
- The maximum floor area restriction only applies to land uses specified in clause 6.6(2) of the HLEP, noting that the land use table permits a range of alternative land uses that are not subject to a maximum gross floor area. Application of a maximum floor area standard to this specific land use which is confirmed by sub consultant reports as being appropriate for the subject site within the village zone, would be unreasonable and inconsistent with the objects of the Act, given the array of land uses permitted in the zone which are not subject to size restrictions.
- Dural Village is located within two Local Government Areas with Old Northern Road acting as a border between The Hills LGA and Hornsby LGA. Clause 6.6 of the HLEP only applies to land within Hornsby LGA, being the eastern side of Old Northern Road. It would be unreasonable to enforce a development standard that restricts size of specific uses within Dural Village to maintain character and amenity of the Village, if the standard is not applicable for the entire village, or all permitted commercial like uses within the Village.
- The design of the medical centre and the exceedance of the gross floor area development standard under Clause 6.6(3) is limited to the specific circumstances of the development proposal. Whilst the use as a total exceeds the maximum GFA requirements the supporting sub consultant reports detail that the scale and intensity of the use is consistent with the existing dental practice operating with the Dural Village and the additional floor area associated with the use is the result of the design of the centre in accordance with updated access and equipment requirements to facilitate the continuation of the business within the community.

There are sufficient environmental planning grounds to justify contravening the development standard

Pearson C held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 request must identify environmental planning grounds that are particular to the circumstances of the proposed development on the particular site.

That decision was upheld on appeal by Pain J ([2015] NSWLEC 90) and the Court of Appeal ([2015] NSWCA 248).

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

However, in circumstances where the development standard exceedance is gross floor area, the area cannot be attributed to a specific component of the development. Accordingly, it is impossible to identify one particular part of the development to which attention must focus. Rather, noting the proposed building contains 2 x medical centre tenancies, the gross floor area is disbursed across the built form as a whole, which is within the expected building envelope for redevelopment of land within the Dural Village, having regard to the character and intensity of land within the Village.

Pursuant to clause 4.6(3)(b) of the HLEP, there are sufficient environmental planning grounds to justify the contravention to the floor space ratio development standard because:

- Clause 6.6 provides restrictions on certain development in Dural Village within Hornsby LGA being specific to land zoned RU5 – Village within Dural on the eastern side of Old Northern Road. The development proposal including the exceedance of the maximum gross floor area standard has been developed as a specific response to assist the relocation of the existing Dural Dental Practice to facilitate the provision of an upgraded dental practice that continues to assist and service the local community, being a direct response to achieving the objectives of this development standard. The design of the medical centre being related to the relocation of an existing medical centre in the Dural Village is an environmental planning ground, specific to the circumstances of this development application.
- The design of the building containing one type of use being 2 x medical centre tenancies is located within the built form expected for redevelopment of this site, notwithstanding the numerical variation. The development proposal is supported by Acoustic and Traffic Reports demonstrating that the additional gross floor area beyond that envisaged by the control will not result in additional amenity impacts on Dural Village. There are no adverse amenity impacts arising from the breach of the gross floor area development standard. This is a recognised environmental planning ground. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at 34.

- The design of the building readily absorbs the additional gross floor area within the curtilage of an expected building envelope on the site in accordance with the planning controls. The supporting sub consultant reports demonstrate that the use will not result in any additional amenity impacts therefore the development proposal itself, whilst presenting a contravention to the standard demonstrates, that the site and context can accommodate the size of the tenancies.
- The development proposal including the contravention to the gross floor area standard is consistent with the following aims of the *Hornsby LEP 2013* found at clause 1.2(2):
 - (2)(a)(i) The development proposal assists the longevity of the Dural Dentist Practice providing a upgraded centre that meets current equipment and access requirements continuing to serve the Dural local area.
 - (2)(e)(ii) The development proposed has been designed within the expected built form envisaged by the Hornsby Development Control Plan. The design of the building with two tenancies whilst varying the gross floor area controls for the tenancies is comfortably accommodated within a built form that sits comfortably within the Dural streetscape.
- The contravention to the gross floor area standard is consistent with the following objects of the Environmental Planning and Assessment Act, 1979 as follows:
 - 1.3(c) – The proposal is an orderly and economic use of the site with the variation to gross floor area accommodating a functional medical centre use that can has appropriate facilities meeting equipment requirements for the use and providing a low scale use that continues to service the community without resulting in unreasonable amenity impacts beyond that expected for the zone.
 - 1.3(g) – The contravention to the standard presents a good design outcome for the development, allowing two times medical centre tenancies located within a built form consistent with the operational intensity of the existing dental clinic located opposite the subject the site within the Dural locality.

Conclusion

The development proposal presents a contravention to the maximum 100m² gross floor area standard contained within clause 6.6(3)(b) of the HLEP. Notwithstanding, the development proposal is a good planning outcome for the subject site, that is an appropriate redevelopment of land within the RU5 – Village zone in Dural.

The development proposal including the exceedance of the maximum gross floor area standard has been developed as a specific response to assist the relocation of the existing Dural Dental Practice to facilitate the provision of an upgraded dental practice that continues to assist and service the local community, being a direct response to achieving the objectives of this development standard.

The design of the building containing one type of use being 2 x medical centre tenancies is located within the built form expected for redevelopment of this site, notwithstanding the numerical variation. The development proposal is supported by Acoustic and Traffic Reports demonstrating that the additional gross floor area beyond that envisaged by the control will not result in additional amenity impacts on Dural Village.

The additional gross floor area does not attempt to affect the planning outcome of character for the broader locality rather the additional floor area is accommodated within a built form that comfortably sits within the Dural Village streetscape.

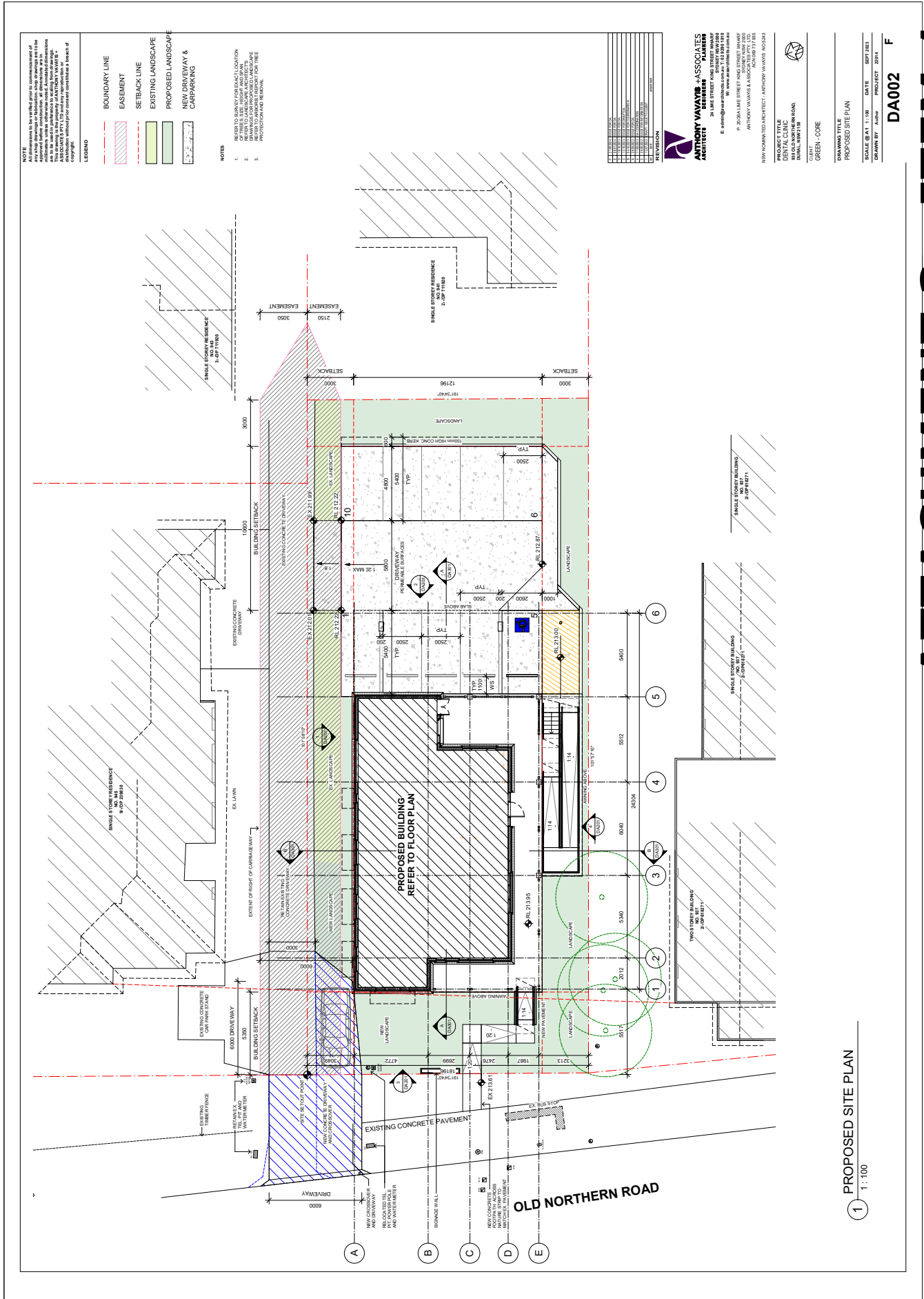
Consistency with the objectives of the land use zone are a consideration under section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, demonstrating the development is in the public interest and has been addressed within the Statement of Environmental Effects. Notwithstanding, the variation to the gross floor area development standard facilitates a good planning outcome for the site that is consistent with the objectives of the land use zone.

The public benefit of maintaining the development standard is not considered significant because the proposed use is permitted with consent on the subject site pursuant to Clause 2.60 of SEPP – Transport and Infrastructure 2021 noting RU5 – Village Zone is a prescribed zone. Strict application of the clause would prevent the provision of a medical centre of an appropriate scale on the site noting the equipment requirements to facilitate such a use.

The application to contravene the development standard pursuant to *Clause 6.6 Hornsby Local Environmental Plan 2013* is well founded and, as addressed above, the proposed density meets the objectives of the development standard. The proposal achieves an acceptable design that does not result in unreasonable visual and amenity impacts upon surrounding development and is a desirable outcome in terms of built form and intensity of use for the site and locality.

In accordance with the environmental planning grounds addressed in this clause 4.6 request, the contravention to the 100m² gross floor area standard can be supported.

Chapman Planning Pty Ltd



ATTACHMENT 3 - ITEM 1

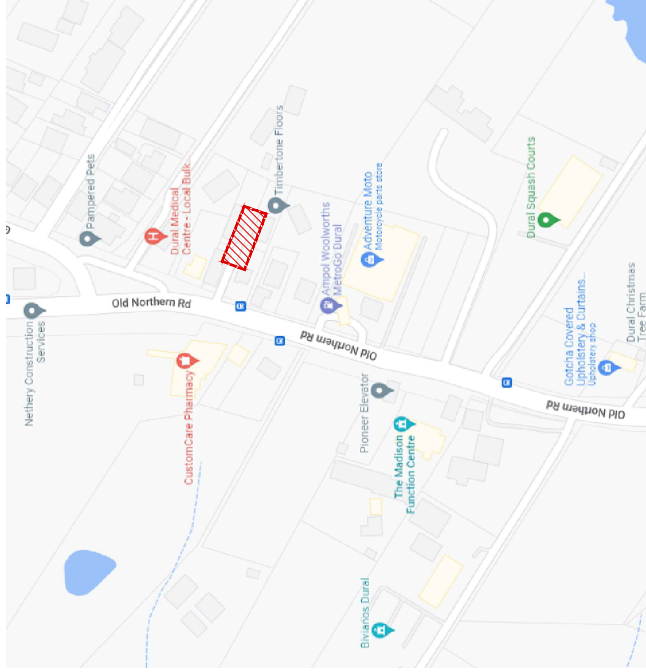
Dental Clinic

Landscape Development Application

939 Old Northern Road, Dural NSW 2158

Drawing Schedule

Drawing Number	Drawing Title	Scale
L-000	Coversheet & Site Plan	N/A
L-100	Landscape Plan	1:100
L-200	Planting Plan & Schedule	1:100
L-500	Landscape Specification	N/A
L-501	Landscape Details	Varies



Site Plan | Scale - NTS

© 2023 Site Image Pty Ltd. All rights reserved. This image is a site image created for the purpose of providing a visual representation of the proposed development. It is not a site plan or a technical drawing. The image is for informational purposes only and should not be used for any other purpose. The image is subject to change without notice. The image is provided as a service to the client and is not a guarantee of any kind. The image is not a site plan or a technical drawing. The image is for informational purposes only and should not be used for any other purpose. The image is subject to change without notice. The image is provided as a service to the client and is not a guarantee of any kind.

The contractor shall check and verify all work on the site prior to starting work. The contractor shall ensure that all work is completed in accordance with the approved plans and specifications. The contractor shall ensure that all work is completed in accordance with the approved plans and specifications. The contractor shall ensure that all work is completed in accordance with the approved plans and specifications.

Rev	Description	Date
M/W	RS	20/08/2023
N/I	RS	08/08/2023
S	RS	08/08/2023
Drawn	Check	Date

Legend

Code	Description
C	Proposed Construction
B	Proposed Boundary
H	Proposed Hatched Area
R	Proposed Road
S	Proposed Site

Key Plan



Client
Green-core

Address
AVA + Associates

Project
Dental clinic
939 Old Northern Road
Dural, NSW 2158

SITE IMAGE

Level 1, 155 Warring Street
Dural NSW 2158
Australia
Tel: 02 7533 8277
www.siteimage.com.au
info@siteimage.com.au
02 7533 8277

Landscape Architects

DEVELOPMENT APPLICATION

Drawing Name
Coversheet

Scale NTS
Drawing Number
SS22-5033

NOT FOR CONSTRUCTION

A1

ATTACHMENT 4 - ITEM 1



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Ref: 004/2023

10 February 2023

Mr Niklas Green
Greencore
C1.01/50-52 Lyons Road
DRUMMOYNE NSW 2047

By email

Dear Sir

ADVICE REGARDING A PROPOSED DEVELOPMENT AT 939 OLD NORTHERN RD DURAL

1. We are instructed to advise whether the proposed development (**the Proposed Development**) of 939 Old Northern Road Dural (**the Site**) for the purpose of a mixed use development including a medical centre with a floor area of over 100 square metres is permissible development - whether with or without the upholding of a written request pursuant to clause 4.6 of the Hornsby Local Environmental Plan 2013 (**the HLEP**).
2. We note that a pre development application meeting has been held with the Council and that the proposed development application (**the DA**) is to be lodged shortly.
3. For the reasons stated below, it is our opinion that the Proposed Development is permissible with consent and the DA does not need to be accompanied by a clause 4.6 written request under the HLEP.
4. A development application is made pursuant to Division 4.3 of the Environmental Planning and Assessment Act 1979 (**EPA Act**) and must be assessed in accordance with section 4.15 of the EPA Act. Section 4.15 of the EPA Act requires the determining consent authority (in this case, the Hornsby Shire Council) (**the Council**) to consider certain matters in respect of the development application that are of relevance to the application. These include the requirement to consider the provisions of any relevant environmental planning instrument.
5. The term "environmental planning instrument" (**an EPI**) is defined by the EPA Act to mean a state environmental planning policy or a local environmental plan, made or taken to have been made, under Part 3 of the EPA Act and in force.

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ATTACHMENT 5 - ITEM 1

6. The determination by the grant of consent to a development application is made pursuant to section 4.16 of the EPA Act and a Notice of Determination will issue under the EPA Act, not under or pursuant to any particular or “elected” EPI. Therefore, if an EPI applies to the land and its provisions are of relevance to the application, the determining authority is bound to consider the EPI and its relevant provisions.
7. In the present case, the relevant EPIs are State Environmental Planning Policy (Transport and Infrastructure) 2021 (**the SEPP**) and the HLEP.
8. Section 2.60 of the SEPP provides that a **health services facility** is permissible with consent in a prescribed zone (relevantly, the RU5 Village zone):

2.60 Development permitted with consent

- (1) Development for the purpose of health services facilities may be carried out by any person with consent on land in a prescribed zone.

...

- (4) Nothing in this section—

...

(b) otherwise limits the matters to which a consent authority may have regard in determining a development application for development of a kind referred to in subsection (2)

9. The SEPP adopts the Standard Instrument which defines **health services facility** as follows:

health services facility means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following—

- (a) a medical centre,
- (b) community health service facilities,
- (c) health consulting rooms,
- (d) patient transport facilities, including helipads and ambulance facilities,
- (e) hospital.

10. Accordingly, the proposed development of the Site for the purpose of a “medical centre” is permissible pursuant to clause 2.60 of the SEPP.
11. You will note that the Land Use Table in the HLEP for Zone RU5 Village does not list **health services facilities** as permissible with consent:

Zone RU5 Village

1 Objectives of zone

- To provide for a range of land uses, services and facilities that are associated with a rural village.

- To provide for the housing needs of the rural community within a village environment.
- To permit low-scale, low-intensity development that does not unreasonably increase the demand for public infrastructure, services or facilities.

2 Permitted without consent

Environmental protection works; Home occupations

3 Permitted with consent

Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Emergency services facilities; Flood mitigation works; Group homes; Home-based child care; Home businesses; Neighbourhood shops; Office premises; Oyster aquaculture; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Roads; Schools; Secondary dwellings; Shop top housing; Take away food and drink premises; Tank-based aquaculture; Tourist and visitor accommodation; Water reticulation systems

4 Prohibited

Backpackers' accommodation; Farm stay accommodation; Hotel or motel accommodation; Serviced apartments; Any other development not specified in item 2 or 3

12. However, clause 6.6 of the HLEP also needs to be considered. That clause provides as follows:

6.6 Restrictions on certain development in Dural Village

- (1) The objectives of this clause are as follows—
 - (a) to ensure that certain commercial land uses are low-scale and service the local community,
 - (b) to ensure that the development of land for certain commercial uses maintains the character and amenity of Dural Village.
- (2) This clause applies to development comprising any one or more of the following types of development on land in Zone RU5 Village—
 - (a) health consulting rooms,
 - (b) medical centres,
 - (c) office premises,
 - (d) restaurants or cafes,
 - (e) take away food and drink premises.
- (3) Development consent must not be granted for development to which this clause applies unless—
 - (a) the development will result in each lot on which the development is located being used for no more than 3 types of development referred to in subclause (2), and
 - (b) the development comprises a maximum gross floor area of 100 square metres for each type of development referred to in subclause (2).
- (4) Despite subclause (3) (b), development consent may be granted for development to which this clause applies that includes a type of development referred to in subclause (2) with a gross floor area of more than 100 square metres if that type of development is located wholly within the external walls of a dwelling that existed prior to 21 February 2003.

13. Clause 6.6 is unusual in that it appears to make certain purposes of development which are otherwise not specified in the Land Use Table (being **health consulting rooms** and **medical centres**) permissible with consent but subject to a restriction in terms of a maximum gross floor area of 100 square metres.

14. In our opinion, the issue that needs to be determined is whether there is an inconsistency between the SEPP and the HLEP and what that does in terms of permitting the Proposed Development.
15. As a matter of law, and pursuant to section 3.28 of the EPA Act, where there is an inconsistency between the provisions of two EPIs, a state environmental planning policy generally prevails over a local environmental plan to the extent of any such inconsistency.

3.28 Inconsistency between instruments

(cf previous s 36)

(1) In the event of an inconsistency between environmental planning instruments and unless otherwise provided—

(a) there is a general presumption that a State environmental planning policy prevails over a local environmental plan or other instrument made before or after that State environmental planning policy, and

(b) (Repealed)

(c) the general presumptions of the law as to when an Act prevails over another Act apply to when one kind of environmental planning instrument prevails over another environmental planning instrument of the same kind.

(2), (3) (Repealed)

(4) Nothing in this section prevents an environmental planning instrument from being expressly amended by a later environmental planning instrument, of the same or a different kind, to provide for the way in which an inconsistency between them is to be resolved.

16. In this regard, we also note that clause 2.7 of the SEPP further provides as follows:

2.7 Relationship to other environmental planning instruments

Note—

This section is subject to section 3.28(4) of the Act.

(1) Except as provided by subsection (2), if there is an inconsistency between this Chapter and any other environmental planning instrument, whether made before or after the commencement of this Chapter, this Chapter prevails to the extent of the inconsistency.

Note—

Subsection (1) does not prevent a local environmental plan from making provision about development of a kind specified in Part 2.3 in a particular zone if the provisions of this Chapter dealing with development of that kind do not apply in that zone.

17. Irrespective of the apparent internal inconsistency within the HLEP, we consider that clause 2.60 of the SEPP prevails and **health services facilities** are permissible with consent in the RU5 zone. In our opinion, the correct interpretation of the inconsistency between clause 2.60 of the SEPP which permits the Proposed Development without a gross floor area restriction and clause 6.6 of the HLEP which purports to impose such a restriction is to be

determined by the SEPP prevailing over the HLEP to the extent of that inconsistency.

18. In our opinion:
- (a) the Proposed Development is permissible with consent pursuant to clause 2.60 of the SEPP; and
 - (b) the DA does not need to be accompanied by a clause 4.6 written request as the Proposed Development does not propose a contravention of an applicable development standard.
19. Please contact us if you have any questions about this letter.

Yours faithfully
Apex Planning and Environment Law



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Ref: 004/2023

13 February 2023

Mr Niklas Green
Greencore
C1.01/50-52 Lyons Road
DRUMMOYNE NSW 2047

By email

Dear Sir

**ADDENDUM - ADVICE REGARDING A PROPOSED DEVELOPMENT AT 939
OLD NORTHERN RD DURAL**

1. We refer to our letter of advice dated 10 February 2023 (**our Advice**). This letter should be read as an addendum to that advice.
2. At paragraph 14 of our Advice we noted that clause 6.6 of the HLEP appeared to make certain purposes of development which are otherwise not specifically nominated in the Land Use Table being **health consulting rooms** and **medical centres** permissible with consent but subject to a restriction in terms of a maximum gross floor area of 100 square metres.
3. However, we do note that **shop top housing** is a nominated permissible purpose of development in the Land Use Table. The dictionary to the HLEP defines shop top housing as follows:

shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.
4. In our opinion, the reference to **health services facilities** in the definition of **shop top housing** explains the purpose of clause 6.6 of the HLEP and resolves our concern about an internal inconsistency in the HLEP.
5. Nonetheless as the Proposed Development does not propose development for the purpose of shop top housing our conclusion at paragraphs 17 and 18 of our Advice remains the same. That is, the Proposed Development is permissible with consent pursuant to clause 2.60 of the SEPP and the DA does not need to be accompanied by a clause 4.6 written request as the Proposed Development does not propose a contravention of an applicable development standard.

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ATTACHMENT 6 - ITEM 1

6. Please contact us if you have any questions about this letter.

Yours faithfully
Apex Planning and Environment Law



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2 REPORTING DEVELOPMENT APPLICATIONS FOR DETERMINATION BY THE HORNSBY LOCAL PLANNING PANEL OVER 180 DAYS

EXECUTIVE SUMMARY

- In accordance with the Local Planning Panels Directions - Operational Procedures, Council is required to monitor development applications to be determined by the Panel that may be experiencing unreasonable delays of over 180 days from lodgement.
- A list of out outstanding development applications in excess of 180 calendar days from lodgement is attached for the Hornsby Local Planning Panel's advice.

RECOMMENDATION

THAT the contents of LPP Report No. LPP20/24 be received and noted.

PURPOSE

The purpose of this report is to advise the Hornsby Local Planning Panel of development applications required to be determined by the Panel that are over 180 calendar days from lodgement.

DISCUSSION

In 2019 the NSW Productivity Commission conducted a review of the Independent Planning Commission (IPC). The review recommended several actions to streamline processes to optimise efficiency, output and performance.

The planning panel changes were implemented on 1 August 2020 to incorporate a number of the NSW Productivity Commission 's recommendations to the way Local Planning Panels work to make them more efficient and to improve the assessment and determination times of development applications and maintain panel oversight of sensitive and contentious applications.

These changes were made as part of the Planning Acceleration Program to support the State's immediate and long-term economic recovery from the COVID-19 crisis.

The changes will speed up panel determinations by:

1. Reducing the need to conduct public panel meetings for non-contentious matters by applying a '10-or-more' objection trigger for public meetings.
2. Reducing the amount of modifications going to panels.
3. Obliging panel chairs to more actively manage development applications (DAs) coming to the panels to reduce panel deferrals and assessment timeframes.
4. Allowing chairs to bring forward determination on DAs that are experiencing unreasonable delays of over 180 days from lodgement.
5. Introducing panel performance measures.

The Local Planning Panels Directions - Operational Procedures has been amended to:

- Require panels to make determinations within two weeks of being provided an assessment report.
- Require panels to hold a public meeting only where the Development Application has attracted 10 or more unique submissions by way of objection.
- Allow, at the Chair's discretion, applicants to attend a briefing, along with council staff, to explain complex matters or present confidential or commercially sensitive material.
- Oblige panel chairs to work with council to ensure key issues are addressed during assessment in order to minimise deferrals by the panels at determination stage.
- Require the panels to provide reasons for deferring a decision and set timeframes in which any additional information must be provided in order to finalise the determination.
- Give panel chairs the ability to require council to report a DA to the panel within four weeks for determination if the application has experienced unreasonable delays in excess of 180 calendar days from lodgement.

In accordance with Point 6 of the Local Planning Panels Directions - Operational Procedures, attached is a list of development applications required to be determined by the Panel that are over 180 calendar days from lodgement.

CONCLUSION

Council is required to monitor development applications to be determined by the Panel that are over 180 calendar days from lodgement. This report provides advice to the Local Planning Panel on DAs that are experiencing unreasonable delays of over 180 days from lodgement.

RESPONSIBLE OFFICER


The officer responsible for the preparation of this report is the Major Development Manager, Cassandra Williams.

JAMES FARRINGTON

Director - Planning and Compliance

Planning and Compliance Division

Attachments:

1.  DAs over 180 days - August



2024

File Reference: F2013/00295-004

Document Number: D08942547

List of development applications required to be determined by the LPP that are over 180 calendar days from lodgement.

DA No.	Proposal	Address	Reason	Est. Date to LPP	Advice to Chair	No. Days at 28/8
DA/411/2023	Demolition of existing structures and construction of double storey commercial building with basement parking	350-352 Galston Road, Galston	>10% height, >10% FSR >10 submissions Dedication of land	Sept	Applicant has submitted amended architectural plans. A report is being prepared for the September LPP meeting.	471