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## **Bayside Planning Panel**

**13/02/2018**

Item No	<b>6.5</b>
Application Type	Development Application
Application Number	DA-2017/425
Lodgement Date	24/07/2017
Property	<b>102 Frederick Street, Rockdale NSW 2216</b>
Owner	United Church in Australia Property Trust NSW
Applicant	United Church in Australia Property Trust NSW
Proposal	Alterations and additions, including facade modifications and addition of a lift capable of fitting a medical stretcher, to existing aged care facility known as the Uniting Bruce Sharpe Lodge
No. of Submissions	One (1) submission received
Cost of Development	\$514,371
Report by	Patrick Waite - Creative Planning Solutions Pty Ltd Marta M. Gonzalez-Valdes

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## **Officer Recommendation**

- 1 That the Bayside Planning Panel supports the variation to clause 40(4)(a), (b) and (c) – Building Height of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 in accordance with the Clause 4.6 justification provided by the applicant.
  - 2 That the Bayside Planning Panel supports the variation to clause 4.4 – Floor Space Ratio of Rockdale Local Environmental Plan 2011 in accordance with the Clause 4.6 justification provided by the applicant.
  - 3 That the development application DA-2017/100 for alterations and additions, including facade modifications and addition of a lift capable of fitting a medical stretcher, to existing aged care facility known as the Uniting Bruce Sharpe Lodge at 102 Frederick Street be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - 4 That the objector be advised of the Bayside Planning Panel's decision.
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## **Attachments**

- 1 Planning Assessment Report
- 2 Schedule 1 – Draft Conditions of Consent
- 3 Proposed Plans – Front
- 4 Proposed Front Elevation & Part Sections
- 5 Proposed Ground Floor & Roof Plans

- 6 Proposed South East Elevation & Sections
  - 7 Proposed South West Elevation & Section 3-3 – Rear
  - 8 Clause 4.6 written request – Height
  - 9 Clause 4.6 written request - Density
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## Location Map

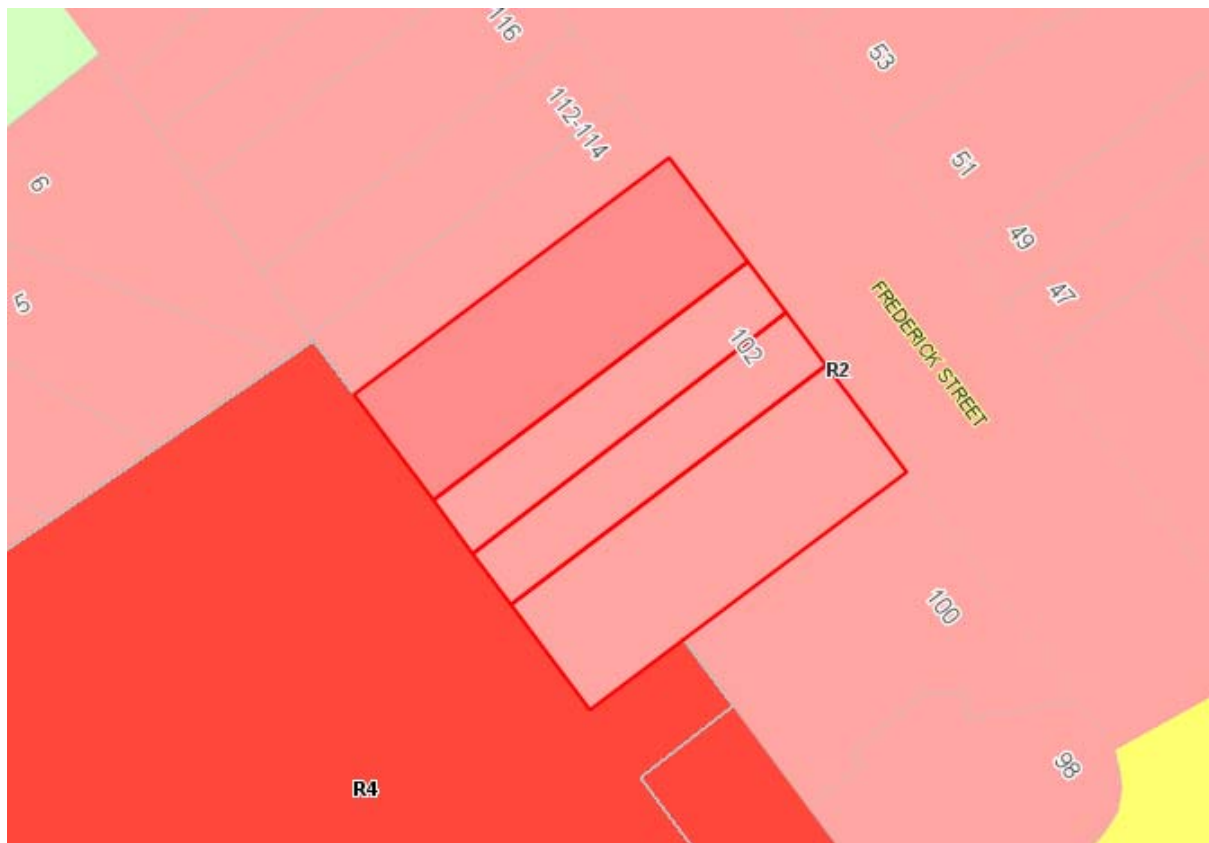


Fig 1. Site location

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2017/425
<b>Date of Receipt:</b>	24 July 2017
<b>Property:</b>	102 Frederick Street, Rockdale NSW 2216
<b>Owner:</b>	Uniting Church in Australia Property Trust NSW
<b>Applicant:</b>	Uniting Church in Australia Property Trust NSW
<b>Proposal:</b>	Alterations and additions, including facade modifications and addition of a lift capable of fitting a medical stretcher, to existing aged care facility known as the Uniting Bruce Sharpe Lodge
<b>Recommendation:</b>	Approval, subject to recommended conditions of consent
<b>No. of submissions:</b>	One (1) submission received
<b>Author:</b>	Patrick Waite - Creative Planning Solutions Pty Ltd
<b>Coordinator:</b>	Marta M. Gonzalez-Valdes
<b>Date of report:</b>	23 January 2018

### Key Issues

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- **Noise from lift:** Concerns were raised by the objector in their submission regarding the potential noise impact resulting from the operation of the proposed lift on adjoining neighbours. A Noise Assessment, prepared by Noise and Sound Services and submitted with the DA, concluded that the operation of the proposed lift, as attenuated by the masonry walls, will not exceed the amenity criteria of the *Industrial Noise Policy 2000* for noise at residential property boundaries in suburban areas. To ensure the conclusions of the report are reflective of future conditions, a condition of consent requiring the development to comply with the *Industrial Noise Policy 2000* criteria shall be imposed in the Notice of Determination.
- **Height exceedance with the *State Environmental Planning Policy (Housing for Seniors and People with Disabilities) 2004*:** The proposal results in a variance of 21.25%, or 1.7m over the 8m building height limit under clause 40(4)(a) of the *State Environmental Planning Policy (Housing for Seniors and People with Disabilities) 2004*. The proposal also includes a variance whereby clause 40(4)(b) of the Seniors SEPP restricts a building adjacent to a boundary of the site to 2 storeys, and clause 40(4)(c) restricts buildings located in the rear 25% area of the site to 1 storey. The proposal adds the lift shaft to an existing three-storey building in the rear portion of the site. The existing building for which the lift shaft is proposed to service has a building height of 13.04m. As such, the lift element which is attached to building being 9.7m high, is below the existing maximum height of the building. The applicant has submitted a written request pursuant to clause 4.6 of the *Rockdale Local Environmental Plan 2011*, seeking to vary the height development standards of the *State Environmental Planning*

*Policy (Housing for Seniors and People with Disabilities) 2004*. The written request has been assessed as satisfactorily demonstrating why strict enforcement of the development standard would be unreasonable or unnecessary in the circumstances of the case.

**FSR exceedance with the *Rockdale Local Environmental Plan 2011*:** The subject site is restricted to an FSR of 0.5:1 under the provisions of clause 4.4 of the RLEP. The proposed addition of a lift and associated lobby spaces is limited to 11.8m<sup>2</sup> of GFA (0.5% additional GFA over that of the existing arrangement), but will result in the development exhibiting an FSR of 1.384:1. It is noted that the provisions of clause 48(b) of the Seniors SEPP provides that a consent authority must not refuse consent to a development application on the grounds of density and scale if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less.

The above therefore results in a building that has a 176.8% (1,8939.2m<sup>2</sup>) variation to the 0.5:1 development standard under clause 4.4 of the RLEP. However, when having regard to the provisions under clause 48(b) of the Seniors SEPP, the variation to the standards that cannot be used to refuse development consent are in the order of 38.4%, or 798.912m<sup>2</sup>.

The applicant has submitted a written request pursuant to clause 4.6 of the *Rockdale Local Environmental Plan 2011*, seeking to vary the floor space ratio development standard of the *Rockdale Local Environmental Plan 2011*. The written request has also been assessed as satisfactorily demonstrating why strict enforcement of the development standard would be unreasonable or unnecessary in the circumstances of the case.

## Recommendation

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- 1 That the Bayside Planning Panel supports the variation to clause 40(4)(a), (b) and (c) – Building Height of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 in accordance with the Clause 4.6 justification provided by the applicant.
- 2 That the Bayside Planning Panel supports the variation to clause 4.4 – Floor Space Ratio of Rockdale Local Environmental Plan 2011 in accordance with the Clause 4.6 justification provided by the applicant.
- 3 That the development application DA-2017/100 for alterations and additions, including facade modifications and addition of a lift capable of fitting a medical stretcher, to existing aged care facility known as the Uniting Bruce Sharpe Lodge at 102 Frederick Street be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
- 4 That the objector be advised of the Bayside Planning Panel's decision.

# Background

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## History

Relevant site history as follows:

On 25 March 2009, a private certifier approved the connection of an existing automatic fire alarm system to another approved service provider.

On 10 March 2010, under delegated authority Council approved works associated with internal alterations to include a new office and kitchenette on Level 2 and the replacement of existing pergola with new partially covered pergola.

On 1 November 2011, under delegated authority Council approved the addition of two (2) directional signs at each entry to independent living aged care facility on the subject site.

On 22 July 2016, under delegated authority Council approved the addition of roof mounted solar modules to Bruce Sharp Lodge aged care facility located on the subject site.

On 24 July 2017, the subject DA (DA-2017/425) was lodged with Council. The history of the subject application is summarised as follows:

- On 4 August 2017, the DA was notified to adjoining owners in accordance with the *Rockdale Development Controls Plan 2010* (RDCP).
- On 17 October 2017, Council sent the applicant a request for additional information letter outlining the following planning issues with the DA:
  - **Building Height** - Clause 40 of the *State Environmental Planning Policy (Housing for Seniors and People with Disabilities) 2004* (Seniors SEPP) provides development standards relating to building height. Specifically, clause 40 covers that a consent authority must not consent to a DA for seniors housing unless, if the development is proposed in a residential zone where residential flat buildings are not permitted, the height of all buildings in the proposed development must be 8 metres or less. The site is located within the R2 Low Density Residential zone under the provisions of the *Rockdale Local Environmental Plan 2011* (RLEP). Within this zone, development for the purposes of a residential flat building are prohibited. As such, the building height development standard is 8m. The accompanying Statement of Environmental Effects (SEE) outlined that the building height of the proposed development was 9.2m.

For the DA to have been capable for consideration by Council, the submitted SEE should have been accompanied by a written request to vary the aforementioned development standard pursuant to *State Environmental Planning Policy No 1—Development Standards / clause 4.6 written request*.

- On 25 October 2017, the applicant submitted a revised Statement of Environmental Effects, a clause 4.6 written request to vary the maximum building height permitted in Seniors SEPP, and a clause 4.6 written request to vary the maximum floor space ratio of the RLEP.

## Proposal

The proposal seeks consent for the addition of a lift and façade modifications to the existing aged care building (United Bruce Sharp Lodge residential care facility), located at 102 Frederick Street, Rockdale.

A description of the proposed works are as follows:

- *Partial demolition*

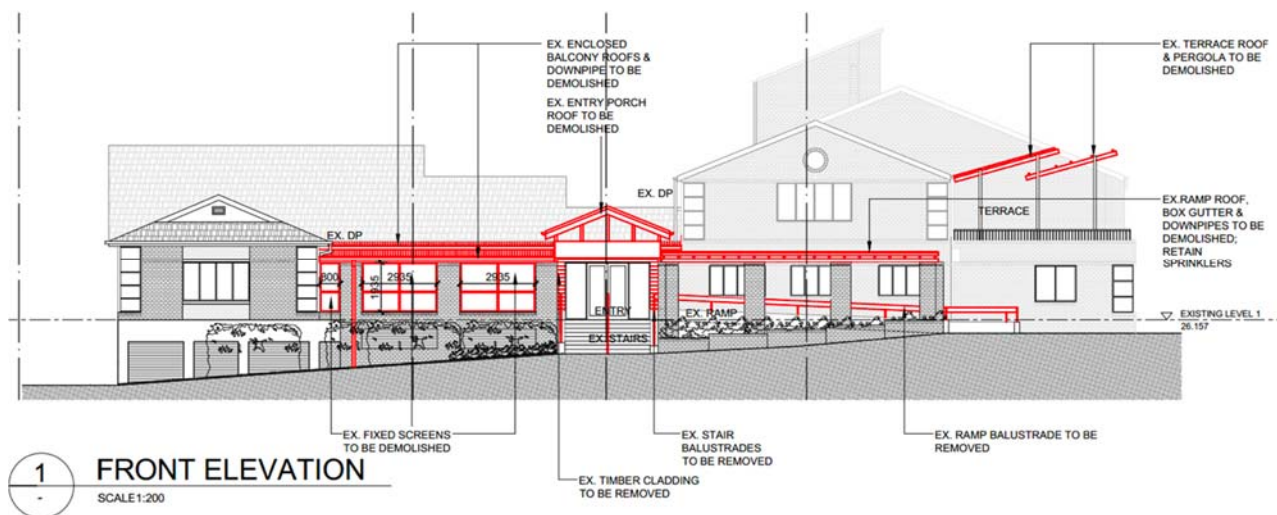
Removal of façade elements and minor building frontage elements, including:

- Entry porch timber cladding and roof over front porch, balcony and access ramp;
- Street facing fixed (window) screens;
- Ramp balustrade;
- First floor terrace roof;
- Rear overflow drainage outlet;
- Rear window and corridor walls.

Removal of rear structures, including:

- Clothes line and bollard light;
- Roof space overflow drainage outlet (to be relocated);
- Power line (to be relocated).

Refer to **Figure 1**.



**Figure 1 - Existing front facade with elements to be removed identified in red**  
Source: Existing Drawings – Elevations & Sections, prepared by Gran Associates

### 1. Front foyer and façade upgrade

- Fibrecement cladding (beige) and innowood cladding feature on entry porch;
- Logo on innowood feature wall of entry porch;
- New render finish to cover existing exposed brick on façade of building;
- New roof over front balconies, entry porch and access ramp;
- New roof over first floor terrace with view of street;
- New glass balustrade.



Refer to **Figure 2**.



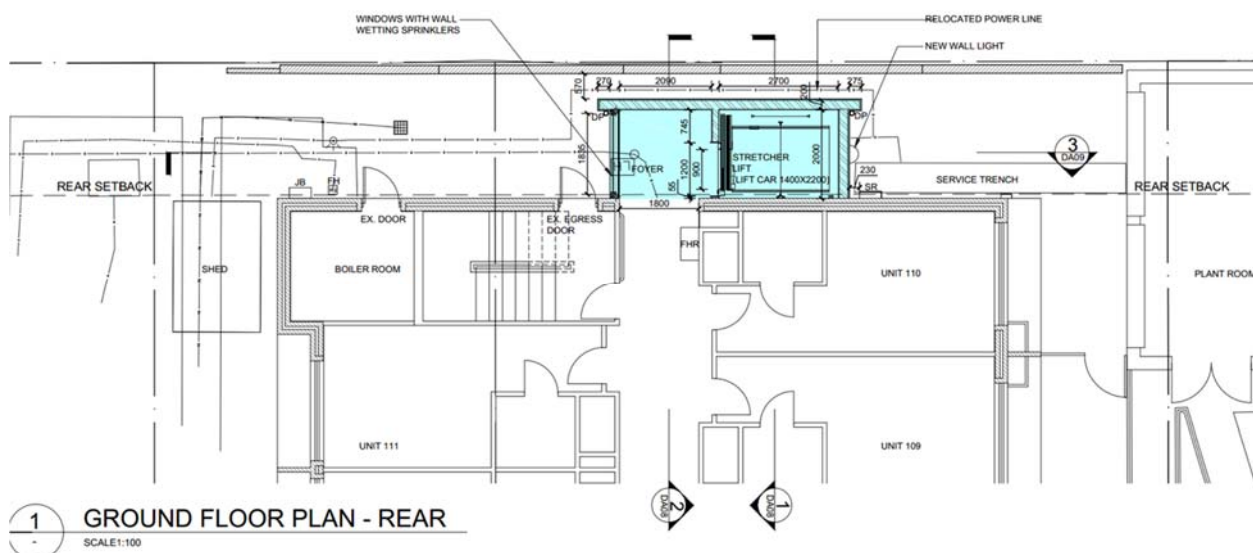
**Figure 2 - Proposed front facade**

*Source: Schedule of Materials and Colours, prepared by The Peppermint Room*

## 2. Addition of stretcher lift to rear of building

- New three-storey lift addition;
- The addition will be 5.8m wide, 2.1m deep, and 9.7m high;
- 1.6m excavation is required for lift well;
- Stretcher lift car dimension are 1.4m x 2.2m and adjoining foyer is 2.09m x 1.97m;
- South-west facing (side view of rear setback) windows provided to foyer;
- Wetting sprinklers provided to windows;
- Walls of addition are 120/120/120 fire rated;
- Innwood cladding on walls.

Refer to **Figure 3**.



**Figure 3 - Rear lift and associated foyer addition**

Source: Proposed Drawings – Plans, prepared by Gran Associates

### 3. Stormwater

- Existing rear stormwater drainage outlet to be relocated.

## Site location and context

The subject site is located as 102 Frederick Street, Rockdale, and is comprised of four (4) lots: Lot 77 DP 1353, Lot A DP 436106, Lot B DP 436106 and Lot 79 DP 190666.

The site is square shaped, with a total site area of 2,080.5m<sup>2</sup> and a single road frontage to Frederick Street of approximately 45.72m. Occupying the site is the United Bruce Sharp Lodge residential care facility, which has been operating on site since 1977. Refer to **Figure 4** for a street view image of the premises.



**Figure 4 - Street image of the subject site**

Source: Google streetview image looking east from Frederick street



To the south, the site is adjoined by a vacant site that was previously occupied by the Macedonian Orthodox Church. The church was destroyed by fire in May 2016.

To the north, the site is directly adjoined by the Mayflower Village Independent Living Units (No 112-114 Frederick Street).

To the west the site is adjoined by a 1970s or 1980s red brick style three-storey 63-unit complex known as 'Fernhill' (43 – 47 Watkin Street). Refer to **Figure 5** for an aerial image.

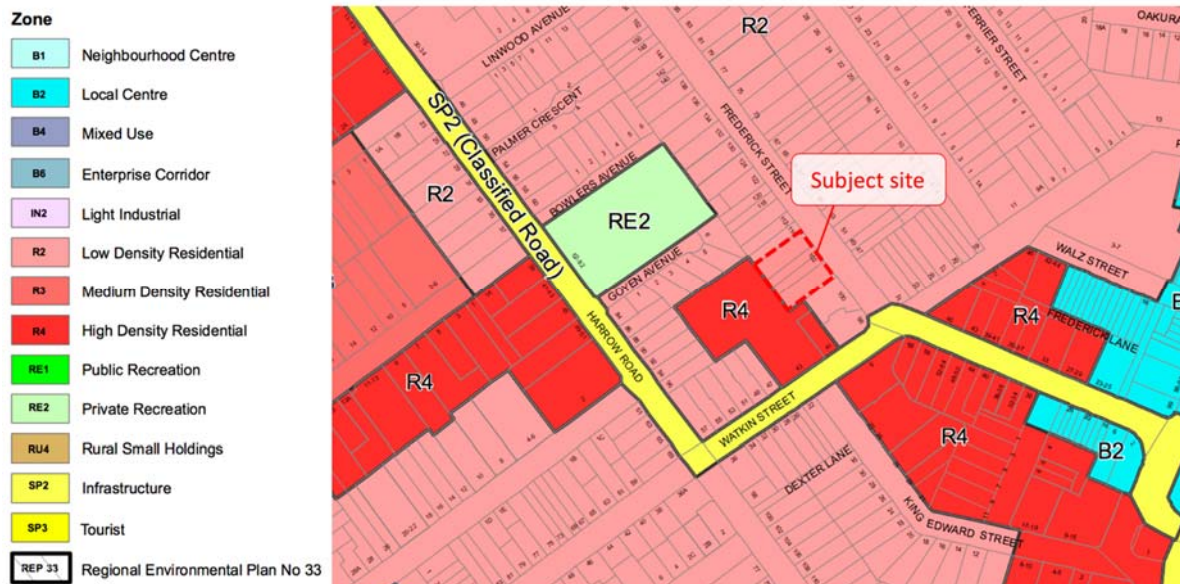
In terms of local context, the site is located in an established residential neighbourhood primarily comprised of low density housing with low to mid-rise apartment block developments located directly to the east, and further south nearing Rockdale Town Centre. Rockdale Train Station is located less than a 400 metre walk east from the subject site.

The site is zoned for low density residential use (refer to **Figure 6**).



**Figure 5 - Aerial Image of the Subject Site - 102 Frederick Street, Rockdale (yellow highlight)**

*Source: maps.six.gov.au, as adapted by CPS*



**Figure 6 - Zoning Map, denoting subject site and immediate local area – Note the subject site is zoned R2 Low Density Residential under the RLEP.**

Source: RLEP, as adapted by CPS

## Statutory Considerations

### *Environmental Planning and Assessment Act, 1979*

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

### **S.79C(1) - Matters for Consideration - General**

### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

### **State Environmental Planning Policy No 55 – Remediation of Land**

Clause 7 of the *State Environmental Planning Policy (SEPP) No. 55* requires a consent authority to consider whether the land is contaminated before providing consent to the carrying out of any development on the land.

In accordance with the *Planning Guidelines SEPP 55 – Remediation of Land* (Department of Urban Affairs and Planning, 1998), when an authority carries out a planning function, the history of land use needs to be considered as an indicator of potential contamination. Where there is no reason to suspect contamination after acting substantially in accordance with these guidelines, the proposal may be processed in the usual way. However, where there is an indication that the land is, or may be, contaminated, the appropriate procedures outlined in these guidelines should be followed. A list of activities that may cause contamination is provided in Table 1 on page 12 of the guidelines.

The suggested checklist for land contamination evaluation contained in the guidelines is addressed as follows:

1. Previous investigation: There is no record of Council having previously investigated the subject site for contamination;

2. Existing records of land use activities:	There is no record that an activity listed in Table 1 of the Guidelines has been approved on the subject site.
3. Zoning (current and previous):	The subject site is currently zoned for residential purposes, which is R2 Medium Residential Density, as per the RLEP 2011. The subject site was previously also zoned for residential purposes, being 2(a) Low Density Residential, pursuant to the RLEP 2000;
4. Land use activities:	The subject land is not currently used for an activity listed in Table 1 of the Guidelines.
5. Licencing or regulation of land for activity outlined in table 1:	To the knowledge of the consent authority, the subject land is not and has not been subject to an Environmental Pollution Licence, or subject to a clean-up order.
6. Land use restriction:	The use of the subject land is not restricted by any notices issued by the EPA.
7. Site inspection:	Subject to a desktop review of aerial imagery and site inspection, there is no evidence to suggest that the subject site or any adjoining sites have previously been used for commercial, industrial, or agricultural activities.
8. Adjoining land:	There is no information available to suggest that adjoining sites are contaminated.

Given that there is no evidence to suggest that the land is contaminated and unsuitable for the proposed development no further land contamination assessment is considered to be required.

Accordingly, the subject site is considered to have satisfied the provisions of SEPP 55 and may proceed in the usual way.

### **State Environmental Planning Instrument (Seniors Housing and Housing for people with disabilities)**

The Seniors Housing SEPP applies to the proposed development as the subject site is occupied by a residential care facility (Bruce Sharpe Uniting Lodge) on land zoned for urban purposes (R2 Low Density Residential).

Part 1 (General), Part 2 (Site-related requirements), and Division 1 (General) of Part 3 (Design requirements) of the Seniors SEPP do not need to be considered, as they contain site prequalifying planning controls for seniors housing developments. The subject premises to which the proposed alterations and additions relate already exists.

The proposed alterations and additions development must however, satisfy Division 2 (Design Principles) of Part 3 of the Seniors SEPP before the consent authority can consider granting consent. These design principles are considered as follows:

#### **Part 3, Division 2 (Design principles)**

##### Clause 33 – Neighbourhood amenity and streetscape

The proposed development is limited to minor alterations to the street façade and the addition of a lift capable of fitting a stretcher facility to support the operation of the existing

facility. The impact of the proposal on the *neighbourhood amenity* and *streetscape*, are discussed in the following.

#### *Neighbourhood amenity*

The proposed lift addition exhibits a maximum height of 9.7m, and will be located a minimum 0.57m from the western (rear) property boundary fence. When considering the proposal in context of adjoining development and the locality, the following is noted:

- The proposed addition, being 5.8m in length, covers less than a third of the existing rear wall length;
- The location of the proposed lift addition faces the rear car parking area of the apartment building at 43-47 Watkins Street;
- The proposed addition will not be viewable from the Frederick Street.
- The lift well addition will not impact any sightlines or the residential amenity of the side adjoining property at 112-114 Frederick Street to the north;
- The existing urban morphology includes an eclectic mix of setbacks, lot orientations, and built forms, illustrating that a uniform rear setback has not been established in the local area. It is common for brick sheds and garages to be constructed on the rear boundary of properties;
- The lift well addition is minor in scale when considering the aged care building in its entirety;
- The lift well will be clad in fibrocement ensuring the addition does not stand out in colour or material composition;

In this regard, the proposal is not considered to result in any unreasonable impacts to the neighbourhood amenity.

Refer to **Figure 7** for an aerial image of the proposed location of the lift well.





**Figure 7- Approximate location of the lift addition, denoting adjoining carpark**

Source: maps.google.com, as adapted by CPS

### *Streetscape*

The façade changes are considered to improve the street presentation of the aged care facility through a visual uplift of the front façade and main entrance to the building. The existing building's architectural integrity and associated urban relationship to adjoining buildings are maintained.

Refer to **Figure 8** and **9** for a comparison between the existing front façade and proposed front façade.



**Figure 8 – Proposed front facade**

Source: Schedule of Materials and Colours, prepared by The Peppermint Room



**Figure 9 – Existing front facade**

Source: Google Street view – image dated October 2017

The proposed stretcher lift will be located to the rear of the building and therefore be largely indiscernible from the street.

### Clause 34 - Visual and acoustic privacy



### *Overlooking opportunities*

The proposed addition is not afforded any windows that overlook an adjoining property boundary. Windows are proposed on the south-western elevation of the additions which have a view that is parallel to that of the western (rear) property boundary.

In this regard, the proposed addition will reduce opportunities for overlooking and improve visual privacy of the adjoining neighbour as the existing hallway windows which currently face directly to the western (rear) boundary will be removed.

### *Noise impacts from lift operation*

The proposed stretcher lift will be enclosed by a masonry wall of 120/120/120 fire rating. The wall facing the nearest residential boundary will further be covered by fibrocement cladding (also 120/120/120 fire rated). Refer to **Figure 10** for an extract of the lift addition.

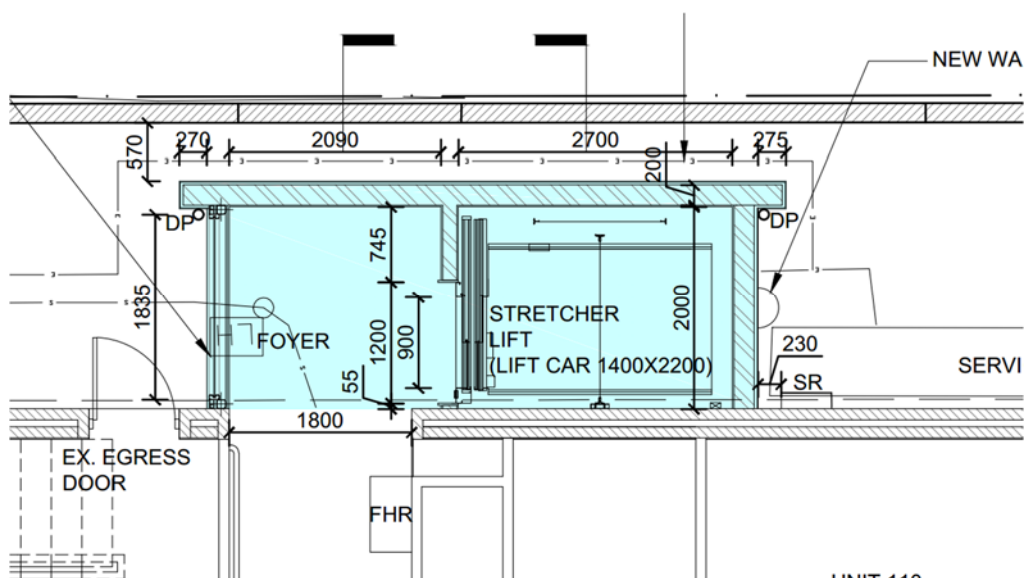
The DA is accompanied by a Noise Assessment prepared by Noise and Sound Services (Report No: nss22646-Final, dated July 2017). The noise modelling contained in this report determined that the operation of the stretcher lift (Schindler 5500), as enclosed by the 120/120/120 fire rated walls, will not exceed the recommended noise maximum volumes at the nearest adjoining property at 34-47 Watkins Street.

The Noise Assessment report concluded that 'all of the noise goals based on the worst-case scenario given in the NSW Government's *Industrial Noise Policy 2000* and the manufacturers' internal lift noise levels will be met at the nearest neighbouring boundary.'

In support of the noise assessment report, and to ensure the conclusion of the report is reflective of future lift operation, the following condition is proposed to be imposed on the Notice of Determination:

### *Noise from Mechanical Plant – passenger lift*

*The use of mechanical plant including passenger lifts, air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall ensure the noise emitted therefrom does not exceed 5dB(A) above the background noise level when measured at any affected residence.*



**Figure 10 - Extract of lift well and associated lobby**

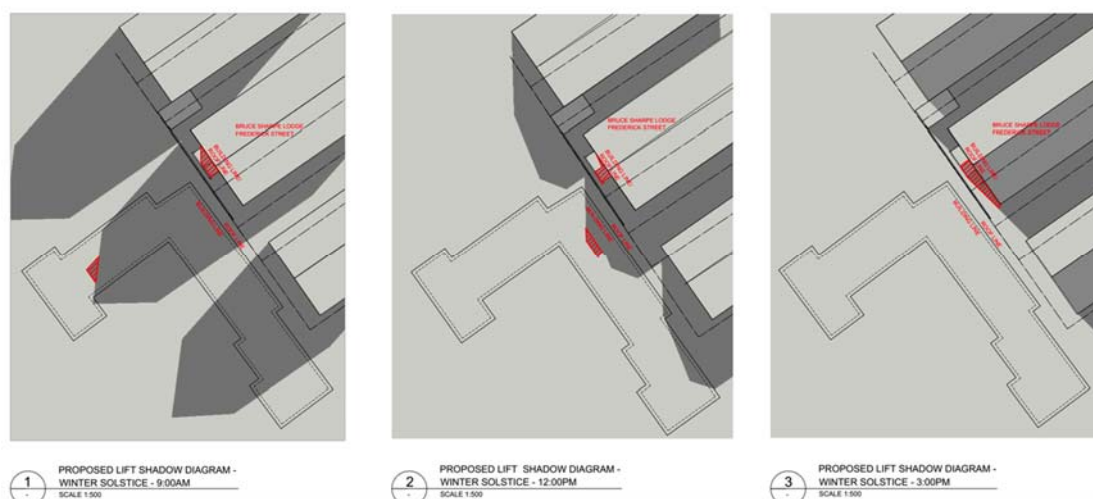
## Clause 35 Solar access and design for climate

### Overshadowing

The existing 2 and 3 storey aged care facility has a north-west to south-east orientation. The addition, having a depth of 2.1m and a length of 5.8m, will be located on the south-eastern end of the aged care facility.

Shadow diagrams prepared by Gran Associates and submitted in support of the DA, illustrate that the property to the east will experience a negligible increase in overshadowing. During the winter solstice, at 9am and 12 pm, the increased shadow will fall on the roof of the west adjoining apartment building (43 Watkin Street). At 3pm the additional shadow falls within the subject site boundary. Refer to **Figure 11** for an extract of the shadow diagrams.

In this regard, the overshadowing impact of the proposal is considered to be acceptable.



**Figure 11 - Extract of the shadow diagrams showing the minor increase in overshadowing in red.**

Source: Shadow Diagrams, prepared by Gran Associates

## Clause 36 Stormwater

The proposed additions and alterations works will be required to be connected to the existing stormwater drainage system. A condition of consent is recommended to be imposed in the Notice of Determination to ensure this occurs and as recommended by Council's engineer.

## Clause 37 Crime prevention

The proposed works to the façade of the building includes the Crimsafe screening to the windows which is supportive of crime prevention principles. The low height front landscaping is not proposed to be changes, and will therefore not impact on existing sightlines to the street.

## Clause 38 Accessibility

No change is proposed regarding the accessibility arrangements to the existing aged care facility. The proposed development will need to comply with the applicable standards of the BCA, which is included as a recommended condition of consent.

## Clause 39 Waste management

Existing water management processes is not proposed to be changed.

## Part 4 Development standards to be complied with

A consent authority must not consent to a development application made pursuant to this Chapter (Development for seniors housing) unless the proposed development complies with the standards specified in clause 40 of the Seniors SEPP. Refer to table below.

<b>Clause 40 Development standards—minimum sizes and building height</b>	
(2) Site area – at least 1,000m <sup>2</sup>	<b>Existing facility.</b> <b>Complies nonetheless.</b> The site on which the United Bruce Sharp Lodge residential care facility is located is 2,080.5m <sup>2</sup> in area.
(3) Site frontage – minimum 20m	<b>Existing facility.</b> <b>Complies nonetheless.</b> The site has a minimum frontage of about 45.72m.
(4) Height in zones where residential flat buildings are not permitted: (a) the height of all buildings in the proposed development must be 8 metres or less, and (b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.  <b>Note.</b> Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).	(a) <b>Non-compliant.</b> Existing height of buildings exceed 8m. The proposed height of the lift addition is 9.7m, which is a 21.3% exceedance. The applicant has submitted a written request pursuant to clause 4.6 of the RLEP to vary this development standard. (b) <b>Non-compliant.</b> Existing building is more than 2 storeys adjacent to a boundary. Proposed lift addition is to service 3 storeys. The applicant has submitted a written request pursuant to clause 4.6 of the RLEP to vary this development standard. (c) <b>Non-compliant.</b> Existing building is more than 2 storeys in the rear quarter of the site. The applicant has submitted a written request pursuant to clause 4.6 of the RLEP to vary this development standard.  See discussion of the applicant's clause 4.6 written request following this table.
<b>Division 2 Residential care facilities—standards concerning accessibility and useability</b>	
Development standards concerning accessibility and useability for residential care facilities are not specified in this Policy. For relevant standards, see the Commonwealth aged care accreditation standards and the <i>Building Code of Australia</i> .	All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA). A condition of consent will be imposed to this effect.
<b>48 Standards that cannot be used to refuse development consent for residential care facilities</b>	

<p>(a) <b>building height:</b> if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys), or</p> <p><b>Note.</b> The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent.</p>	<p>The existing building is greater than 8m in height.</p> <p>The purpose of the proposed addition is to improve the functionality and use of the existing aged care facility by allowing beds to be carried with the lift as the existing lift is too small in size to fit a stretcher or a bed. Accordingly, the addition will match the existing height and will be greater than 8m in height.</p> <p>It is noted that a clause 4.6 written request has been submitted in relation to the variation in building height – see discussion below.</p>
<p>(b) <b>density and scale:</b> if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less</p> <p><b>Note.</b> The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent.</p>	<p>The subject area (comprising of four lots) has a total area of 2,080.5m<sup>2</sup>. The existing buildings on the subject site exhibit a total gross floor area (GFA) of 2,868.5m<sup>2</sup>, which is a floor space ratio of 1.37:1. The proposed addition of a lift and associated lobby spaces equates to 11.8m<sup>2</sup> of GFA, resulting in the development exhibiting a non-compliant floor space ratio of 1.384:1.</p> <p>Despite this, the note contained under clause 48 outlines that the provision of this clause does not impose any limitations on the grounds which a consent authority may grant consent. In this regard, it is considered that the proposal exhibits sufficient merit for which the density and scale may be exceeded, as demonstrated by the following:</p> <ul style="list-style-type: none"> <li>• The proposal seeks to improve the functionality of the existing aged care facility,</li> <li>• The proposal will not result in an increase to the number of beds within the premises, and</li> <li>• The proposal does not result in the creation of an unacceptable sense of enclosure on adjoining residential property.</li> </ul>
<p>(c) <b>landscaped area:</b> if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,</p>	<p>The proposal does not seek to increase the number of residential care facility beds.</p>
<p>(d) <b>parking for residents and visitors</b></p>	<p>The proposal does not seek to increase the capacity of the aged care facility, in term of beds, and therefore demand for car parking is not increased.</p>
<p><b>Clause 55 Residential care facilities for seniors required to have fire sprinkler systems</b></p>	<p>Proposed windows will be fitted with wetting sprinklers.</p>

## Variation to clause 40(4) of the Seniors Housing SEPP

The maximum height of the proposed lift addition is 9.7m (RL 38.97 - RL 29.27), reaching 3 storeys, and is located in the rear setback of the subject property. Clause 40(4)(a) limits the height of all buildings in the proposed development to 8m or less where development is proposed in a residential zone where residential flat buildings are not permitted, clause 40(4)(b) restricts a building adjacent to a boundary of the site to 2 storeys, and clause 40(4)(c) restricts buildings located in the rear 25% area of the site to 1 storey. The proposed variance is 21.25%, or 1.7m over the 8m building height limit under clause 40(4)(a) of the Seniors Housing SEPP.

The applicant has submitted a written request pursuant to clause 4.6 of the RLEP justifying the contravention of clause 40(4)(a), (b) and (c) of the Seniors Housing SEPP.

In accordance with clause 4.6(3)(a) of the RLEP, the applicant has provided the following justification that seeks to demonstrate that compliance with the development standard(s) is unreasonable and unnecessary in the circumstances of the case:

- *The existing building for which the lift well is proposed to service is 13.04m high;*
- *The lift element is an ancillary element to the building being 9.7m high, 5.8m wide; and 2m deep;*
- *The lift addition will not be perceived from any adjoining property as being any larger than the existing structure behind it;*
- *The proposed lift element is required to meet contemporary occupational health and safety standards to allow the proper operation of the established residential care facility, which was first constructed in 1977;*
- *It would be unreasonable to require alternative solutions such as locating the lift entirely within the building, as doing so would be highly disruptive to the existing residential care facility and because the proposed lift structure is significantly lower than the main part of the building;*
- *The proposed lift element does not cause any unreasonable or significant amenity impacts and does result in improved visual privacy impacts and also produces a better thermal efficiency outcome by removing west-facing windows and providing south-facing windows instead;*
- *The overshadowing impacts caused by the proposed lift structure would be absolutely minimal;*
- *The acoustic impacts of the proposed lift are demonstrated to be acceptable.*

In accordance with clause 4.6(3)(b) of the RLEP 2011, the applicant has provided the following justification that seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard:

- *The height permitted on the adjoining property to the west, at 43 Watkin Street, is 14.5 metres. Compared to the height permitted on that site, noting that that site forms the immediate context of the part of the subject site where the proposed addition is proposed, the proposed heights and number of storeys is not unreasonable;*
- *The proposed height non-compliance will not be perceived as part of the streetscape;*
- *The proposed height is not associated with any unacceptable environmental impact. The proposal involves only miniscule additional overshadowing compared to the existing development. The proposal will be seen against the backdrop of the existing development, which is larger and higher than the proposed extension. The proposal therefore makes little difference. Furthermore, the proposed addition predominantly*



*presents to a car-parking area and only presents to adjoining residential units to a limited extent;*

- *When balanced against the benefits of the proposal to the operation of the residential care facility, the proposed minimal impacts of the proposal are acceptable; and*
- *It would be unreasonable to pursue the alternative of accommodating the proposed lift from within the existing building because that would be disruptive to the fabric of the existing residential care facility and would not represent the orderly and economic use of land, which is one of the objects of the Act set out in Part 5(a)(ii).*

In accordance with clause 4.6(4)(a)(i) of the RLEP 2011, it is accepted that compliance with the clause 40(4)(a), (b) and (c) of the Seniors Housing SEPP is unreasonable and unnecessary as:

- The proposed lift addition will support the function and operation of the existing aged care facility;
- The existing subject building already exhibits a maximum height of 13.57m (lift overrun at front of the building), and a maximum height of 11.12m at the rear most wall;
- The addition is not considered to result in any unreasonable impacts to the existing neighbourhood amenity; and
- The addition will not be viewable from the streetscape of Frederick Street;

And, it is accepted that there are sufficient planning grounds to justify the contravention as:

- The subject site directly adjoins land that is zoned R4 High Density Residential, which permits a maximum height of 14.5m under the RLEP 2011. Furthermore, development for the purpose of senior's housing would not be restricted in height by the Seniors SEPP on this land;
- The lift addition directly faces the car park of the land that is zoned R4 High Density Residential;
- When considering the existing urban context, which is comprised of varying urban forms including 3 storey walk-up apartment blocks, older style single dwellings, contemporary 2 storey dwellings, each with varying rear setbacks, the proposed addition does not offend the character of the local area;
- The contravention is found to support the objectives of the R2 Low Density Residential zone in which the subject site is located as it will enable improved operation of an existing aged care and therefore supports the housing needs of the community; and
- The contravention is found to support the aims of the Senior SEPP.

In accordance with clause 4.6(5)(a), (b), and (c):

- The contravention does not raise any matter of significance for State or regional planning; and
- The public benefit is not considered to be maintained by enforcing the development standard in the circumstance of the case.

In this regard, the contravention of clause 40(a), (b), (c) of the Seniors Housing SEPP is accepted. Accordingly, the proposed development is considered to satisfy the provisions of the Seniors Housing SEPP.

## Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	Yes	Yes - see discussion
4.3 Height of buildings	N/A	N/A - see discussion
4.4 Floor space ratio	Yes	No - see discussion
5.10 Heritage Conservation	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes	Yes - see discussion
6.3 Between 20 and 25 ANEF (2033) contours	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion

### 2.3 Zone R2 Low Density Residential

The subject site is zoned R2 Low Density Residential under the provisions of RLEP 2011. The proposed development seeks to perform alterations and additions to an existing residential care facility. Development for the purpose of a residential care facility in an urban area is made permissible by the Seniors g SEPP, and by the permissible forms of development within the R2 zone. The objectives of the zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

The proposed alterations and additions are consistent with the objectives of the zone as it will support the functionality and operation of existing accommodation needs (United Bruce Sharp Lodge residential care facility) in the local area, and will not negatively impact on the existing character of the local area and level of residential amenity enjoyed by adjoining properties.

### 4.3 Height of buildings

Not applicable as the height provisions of the Seniors SEPP prevail over the RLEP. Refer to clause 36 of the *Environmental Planning and Assessment Act 1979*.

### 4.4 Floor space ratio - Bexley

The subject site is restricted to an FSR of 0.5:1 under the provisions of clause 4.4 of the RLEP.

The proposed addition of a lift and associated lobby spaces is limited to 11.8m<sup>2</sup> of GFA, but will result in the development exhibiting an FSR of 1.384:1.

It is noted that the provisions of clause 48(b) of the Seniors SEPP provides that a consent authority must not refuse consent to a development application on the grounds of density and scale is if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less.

The above therefore results in a building that has a 176.8% (1,8939.2m<sup>2</sup>) variation to the 0.5:1 development standard under clause 4.4 of the RLEP. However, when having regard to the provisions under clause 48(b) of the Seniors SEPP, the variation to the standards that cannot be used to refuse development consent are in the order of 38.4%, or 798.912m<sup>2</sup>.

Given the above, Council could refuse consent to the proposed development on the basis of bulk and scale. To do so however is considered to be unreasonable. This unreasonableness is based on the points covered below, and also because the existing building is already significantly over the FSR limit (1.378:1). As mentioned, the proposed works only add an additional 11.8m<sup>2</sup> of gross floor area (GFA) to the building – i.e. about 0.5% additional GFA over that of the existing arrangement.

The applicant has submitted a written request pursuant to clause 4.6 of the RLEP 2011 justifying the contravention of this clause.

In accordance with clause 4.6(3)(a) of the RLEP 2011, the applicant has provided the following justification that seeks to demonstrate that compliance with the development standard(s) is unreasonable and unnecessary in the circumstances of the case:

- *The increase in GFA is negligible;*
- *The proposed contravention is necessary for occupational health and safety reasons, so as to allow residents to be moved in their beds and to allow beds to be properly moved;*
- *The proposed density is not associated with any unacceptable environmental impact. The proposal involves only miniscule additional overshadowing compared to the existing development;*
- *The proposal will be seen against the backdrop of the existing development, which is larger and higher than the proposed extension. The proposal therefore makes little difference.*
- *The proposed addition predominantly presents to a car-parking area and only presents to adjoining residential units to a limited extent;*
- *When balanced against the benefits of the proposal to the operation of the residential care facility, the proposed minimal impacts of the proposal are acceptable;*
- *The proposal results in an overall improvement in visual privacy because it removes existing windows facing towards the subject site and provides a window orientation to the south, perpendicular to 43 Watkin Street; and*
- *It would be unreasonable to pursue the alternative of accommodating the proposed lift from within the existing building because that would be disruptive to the fabric of the existing residential care facility and would not represent the orderly and economic use of land, which is one of the objects of the Act set out in Part 5(a)(ii).*

In accordance with clause 4.6(3)(b) of the RLEP, the applicant has provided the following justification that seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard:

- *Whilst the proposed contravention is to a 0.5:1 development standard, the town planning controls (Senior SEPP) allow a density of 1:1 and the severity of the proposed contravention should be assessed against that standard;*
- *The density permitted on the adjoining property to the west, at 43 Watkin Street, is 1:1. Compared to the density on that site, noting that that site forms the immediate context of the part of the subject site where the proposed addition is proposed, the proposed density is not unreasonable;*

- *The proposal provides a better town planning outcome than the existing development by removing windows that cause significant overlooking, whereas the proposed new windows will not directly face 43 Watkin Street, and by achieving a better energy efficiency outcome by changing the windows from a west-facing orientation to a south-facing orientation;*
- *The planning controls applicable to a residential flat development or to an independent living development would exclude the lifts from being counted as gross floor area. Whilst the lifts must technically be counted as gross floor area, they are a feature that in many forms of development may be excluded;*
- *The proposed lift structure does not contribute to the intensity of use.*

In accordance with clause 4.6(4)(a)(i) of the RLEP 2011, it is accepted that compliance with clause 4.4(2) of the RLEP is unreasonable and unnecessary as:

- The proposed lift addition will support the function and operation of the existing aged care facility;
- The GFA increase is negligible, particularly when considered in the context of the entire building and adjoining development;
- The proposal will not result in an increase the number of beds in the premises;
- The proposal does not result in the creation of an unreasonable sense of enclosure for adjoining properties;
- The proposal will alleviate opportunities for overlooking by removing existing windows with direct views to adjoining properties, as replaced by windows that are offset and do not overlook the rear property boundary; and
- The density, scale and form of the subject building, inclusive of the proposed addition, is comparable to adjoining developments south-west and north of the site.

And, it is accepted that there are sufficient planning grounds to justify the contravention;

- Clause 48 of the Senior SEPP outlines that a consent authority cannot refuse consent for a residential care facility on the grounds of density or scale if the FSR is 1:1 or less. The Seniors SEPP further outlines that the provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent. Accordingly, this SEPP anticipates density and scale of a residential care facility to be greater than what would normally be permitted in a low density residential zone;
- The property adjoining on the south-western boundary is zoned R4 High Density Residential, which permits a maximum FSR of 1:1 under the RLEP;
- The north adjoining property includes a part 2 and part 3 storey building which is likely to have an FSR similar to the proposal;
- The proposal results in an improved outcome in terms of reducing opportunities for overlooking from the existing building;
- The proposed lift structure does not contribute to the intensity of use;
- The proposed development does not increase the bulk and scale of the development presenting to dwellings within low density areas along Frederick Street;
- The contravention is found to support the objectives of the R2 Low Density Residential zone in which the subject site is located as it will enable improved operation of an existing aged care facility and therefore support the accommodation needs of the community; and
- The contravention is found to support the aims of the Senior SEPP.

In accordance with clause 4.6(5)(a), (b), and (c):

- The contravention does not raise any matter of significance for State or regional planning; and
- The public benefit is not considered to be maintained by enforcing the development standard in the circumstance of the case.

In this regard, the contravention of clause 4.4(2) of the RLEP is accepted. Accordingly, the proposed development is considered to satisfy the provisions of the RLEP.

### 5.9 Heritage Conservation

The subject site is not listed as an item of Heritage. The nearest item of heritage is located at 73 Frederick Street, Rockdale, approximately 100m from the subject site and contains Lincluden, a Victorian Style Villa (No. I212 under the RLEP).

Due to this spatial distance, and acknowledging the minor works proposed as part of this development application, the heritage value of Lincluden Victorian Style Villa is not considered to be impacted by the proposal.

### 6.1 Acid Sulfate Soil - Class 5

Acid Sulfate Soils (ASS) – Class 5 affect the property. However, development consent is not required as the proposed excavation will not extend below 1m AHD and therefore dewatering below 1m AHD will not be necessary. In this regard, an acid sulphate management plan will not be necessary.

### 6.3 Development in areas subject to aircraft noise

The development is on land that is located between 20 and 25 ANEF (2033) contours. However, as the development does not seek to increase the number of dwellings, habitable rooms, or people affected by aircraft noise, no further consideration is required under this clause.

### 6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51 metres AHD. The maximum building height of the proposed addition is set at RL 38.97m, and therefore does not penetrate the OLS. Furthermore, the existing building height of the existing aged care facility is RL 40.39m which already exceeds the proposed addition in height. In this regard, the proposal is not considered to have any impact on aircraft operation.

## **S.79C(1)(a)(ii) - Provisions of any Draft EPI's**

No relevant proposed instruments are applicable to this proposal.

## **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

### **Rockdale Development Control Plan 2011**

Consent is sought under the Seniors SEPP, meaning that the proposal must adhere to the provisions and standards of that SEPP. In this regard, it is considered that where there is a conflict between standards of the Seniors SEPP and DCP the Seniors SEPP prevails. Where there is no conflict the provisions and standards of the DCP apply.



ROCKDALE DCP 2011	PROPOSED	COMPLIANCE
<b>Part 4 – General Principles for Development</b>		
<b>Part 4.1 – Site Planning</b>		
<ul style="list-style-type: none"> <li>- Previously assessed, refer to site planning controls contained in clause 34, 35, 36, and 37 of the Seniors Housing SEPP.</li> </ul>		
<b>4.2 Streetscape and Site Context</b>		
<ul style="list-style-type: none"> <li>- Previously assessed, refer to planning controls pertaining to neighbourhood amenity and streetscape contained in clause 33 of the Seniors Housing SEPP.</li> </ul>		
<b>4.3 Landscape Planning and Design</b>		
<ul style="list-style-type: none"> <li>- Proposed development does not seek to change the amount of existing open space, or current landscaping.</li> </ul>		
<b>4.4 Sustainable Building Design</b>		
<ul style="list-style-type: none"> <li>- Previously assessed, refer to clause 35 of the Seniors Housing SEPP for planning controls relating to solar access and design for climate, wherein matters of natural ventilation, solar heating, window orientation is considered.</li> </ul>		
<b>4.5 Social Equity</b>		
<ul style="list-style-type: none"> <li>- Existing development provides for Senior Housing, and satisfies BCA requirements for accessibility. The proposed additions and façade changes will be subject to a condition of consent requiring compliance with the latest BCA provisions.</li> </ul>		
<b>4.6 Car Parking, Access and Movement</b>		
<ul style="list-style-type: none"> <li>- Existing car parking arrangement is not proposed to be changed.</li> </ul>		
<b>4.7 Site Facilities</b>		
<ul style="list-style-type: none"> <li>- No change is proposed to the site facilities.</li> </ul>		

### **S.79C(1)(a)(iv) - Provisions of regulations**

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of *AS 2601:1991 - Demolition of Structures* when demolition of a building is involved.

Clause 94 of the Regulations outline that the consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*, for any alterations or additions that together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls.

The proposal does not seek consent for complete demolition of buildings, but for minor alterations and additions to an existing building, which will be subject to compliance with the BCA. As the proposed works are minor and only representing less than 1% of the volume of the building, it is not appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*.

### **S.79C (1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

No coastal zone management plan applies to the subject site.

## **S.79C(1)(b) - Likely impacts of the development**

*Likely impacts on the natural and built environment:*

The likely impacts of the development on the natural and built environment have been considered within the assessment of the applicable EPI's.

*Likely social and economic impacts of the development:*

The proposal is considered to have a positive social impact on the locality as it will improve the functionality and operation of an existing residential care facility.

## **S.79C(1)(c) - Suitability of the site**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

## **S.79(1)(d) - any submissions made in accordance with this Act or the regulations**

One (1) submission has been received in response to the notification of the DA. The submission, while not directly objecting to the proposal, raised concerns regarding potential noise impacts resulting from the operation of the proposed lift. Specially, the submission raises the following matters/questions:

- *Location of lift motors*

**Comment:** The Shindler 5500 passenger lift utilises a machine-room-less lift motor system which will be located internally at the top of the lift well.

- *Noise assessment report*

**Comment:** The noise assessment prepared by Noise and Sound Services, assumes a night-time noise maximum criteria of 40 dB(A) in accordance with the NSW Government standard for background noise, where if the existing rated background noise level (RBL) at the receptor is less than 40 dB(A), as may occur at night time in a quiet suburban or rural area, then 40 dB(A) should be assumed to be the existing background noise level. A 55 dB(A) maximum is utilised as the day-time limit.

The noise modelling contained in the report, based on an internal lift generating a noise level of 53 dB(A) at the source, and accounting for noise attenuation provided by the masonry wall (120/120/120 fire rated), concluded that a maximum noise level of 27 dB(A) will be experienced at the nearest residential boundary. This satisfies the noise criteria of the Industrial Noise Policy and is therefore considered to be acceptable.

To ensure that assumptions and consideration of the noise assessment is reflective of future lift operation, the following conditions of consent is recommended to be imposed:

*The use of mechanical plant including passenger lifts, air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall ensure the noise emitted therefrom does not exceed 5dB(A) above the background noise level when measured at any affected residence.*

**S.79(1)(e) - the public interest.**

The proposed development is considered be in the public interest as it achieves the objectives of the applicable planning instruments, and supports the improved operation of an existing residential care facility without unduly impacting on the local environment.

## Schedule 1 - Draft Conditions of consent

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### General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received by Council
Plans (Ground Floor - Front)/ Drawing No: DA-05/ Project No: A1601/ Revision: A	Gran Associates Australia Architects	20 June 2017	24/07/2017
Elevation & Section (Front Elevation)/ Drawing No: DA-06/ Project No: A1601/ Revision: A	Gran Associates Australia Architects	20 June 2017	24/07/2017
Plans (Ground Floor - Rear)/ Drawing No: DA-07/ Project No: A1601/ Revision: A	Gran Associates Australia Architects	20 June 2017	24/07/2017
Elevation & Section (South East Elevation)/ Drawing No: DA-08/ Project No: A1601/ Revision: A	Gran Associates Australia Architects	20 June 2017	24/07/2017
Elevation & Section (South West Elevation)/ Drawing No: DA-09/ Project No: A1601/ Revision: A	Gran Associates Australia Architects	20 June 2017	24/07/2017

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).

4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. Further alterations and/or additions to the subject building shall not be undertaken without first obtaining approval. This includes the fitting of any form of doors and/or walls.

### **Development specific conditions**

The following conditions are specific to the Development Application proposal.

6. The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an “offensive noise” as defined under the provisions of the Protection of the Environment Operations Act, 1997.
7. The use of mechanical plant including passenger lifts, air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall ensure the noise emitted therefrom does not exceed 5dB(A) above the background noise level when measured at any affected residence.
8. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
9. Colours and textures of materials used in the extension shall be compatible with the existing building.
10. Where natural ventilation fails to comply with the provisions of the Building Code of Australia, mechanical ventilation shall be provided in accordance with Australian Standard, 1668, Part 2.

### **Prior to issue of the construction certificate**

The following conditions must be completed prior to the issue of the Construction Certificate.

11. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
  - i. A Footpath Reserve Restoration Deposit of \$12,570.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$18.00.



12. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
13. a. Pursuant to section 94A of the Environmental Planning and Assessment Act 1979 and Rockdale Section 94A Development Contributions Plan 2008, a report is to be submitted to Council, prior to approval of the first Part 4A certificate required for the development, identifying the proposed cost of carrying out the development, as follows:
  - i. Where the proposed cost of carrying out the development is less than \$1,000,000, a cost summary report prepared and certified by a building industry professional, or
  - ii. Where the proposed cost of carrying out the development is \$1,000,000 or more, a detailed cost report prepared and certified by a quantity surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate equivalent qualifications. This report is to be prepared in the form specified in Rockdale Section 94A Development Contributions Plan 2008 and the costs must be determined in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000.

Note:

1. Council may review the costs contained in the report and may seek the services of an independent person to verify them. In such a case, all costs associated with obtaining this advice will be at the expense of the applicant and no Part 4A certificate is to be issued until such time as these costs have been paid.

2. The proposed cost of carrying out the development excludes any part of the proposed development that is exempt from the section 94A levy by reason of a Ministerial direction or an exemption specified in Rockdale Section 94A Development Contributions Plan 2008. Where the applicant considers that the proposed development, or any part of it, is or should be exempt from the levy they may submit to Council, prior to approval of the required certificate, an application for exemption giving reasons and providing any necessary evidence for the exemption.

b. Where the proposed cost of carrying out the development, as specified in the cost summary report, the registered surveyor's detailed cost report or the independent review of costs obtained by Council (as the case may be), is more than \$100,000 a section 94A levy is to be paid to Council for the following amount:

- i. Where the proposed cost of carrying out the development is greater than \$100,000 but not more than \$200,000 – 0.5% of that cost, or
- ii. Where the proposed cost of carrying out the development is greater than \$200,000 – 1% of that cost.

This levy is to be paid prior to the issue of the first Part 4A certificate required for the development.

If the levy is not paid within the same financial year as the date on which Council accepted the cost summary report, the registered surveyor's detailed cost report or the independent review of costs (as the case may be), the amount of the levy is to be adjusted at the time of actual payment to reflect changes in construction costs, in accordance with the provisions of Rockdale Section 94A Development Contributions Plan 2008.

Note: This requirement to pay the section 94A levy does not apply if the proposed cost of carrying out the development is \$100,000 or less or Council has confirmed in writing that the proposed development is exempt from the levy.

14. Timber framing members shall comply with the relevant provisions of the National Timber Framing Code AS 1684-1999. Details of the roof truss, truss layout and proposed method of bracing shall be submitted to the Principal Certifying Authority prior to the first inspection.
15. A list of the proposed and existing essential services to be installed in the building shall be submitted to Council in accordance with the relevant requirements.
16. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Certifying Authority for assessment and approval. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management

### **Prior to commencement of works**

The following conditions must be completed prior to the commencement of works.

17. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
18. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - i. stating that unauthorised entry to the work site is prohibited, and
  - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
    - iii. building work carried out inside an existing building or
    - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
19. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
20. (a) A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
  - (i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
  - (ii) building involves the enclosure of a public place,
- (b) Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.

(c) Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:

(i) the vertical height above footpath level of the structure being demolished is less than 4m; or

(ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

(i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;

(ii) have a clear height above the footpath of not less than 2.1m;

(iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and

(iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids. Any such hoarding, fence or awning is to be removed when the work has been completed.

(d) The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

21. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

## **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

22. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request
23. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
24. For Class 2, 3 and 4 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
- i. after excavation for, and before the placement of, any footing, and
  - ii. prior to covering waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
  - iii. prior to covering any stormwater drainage connections, and

- iv. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.

- 25. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.

- 26. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
- 27. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
- 28. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- i. preserve and protect the building from damage and
- ii. underpin and support the building in an approved manner, if necessary and
- iii. give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

- 29. The following conditions are necessary to ensure minimal impacts during construction:
  - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways,

footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

- ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
  - a) spraying water in dry windy weather
  - b) cover stockpiles
  - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

## **Prior to issue of occupation certificate or commencement of use**

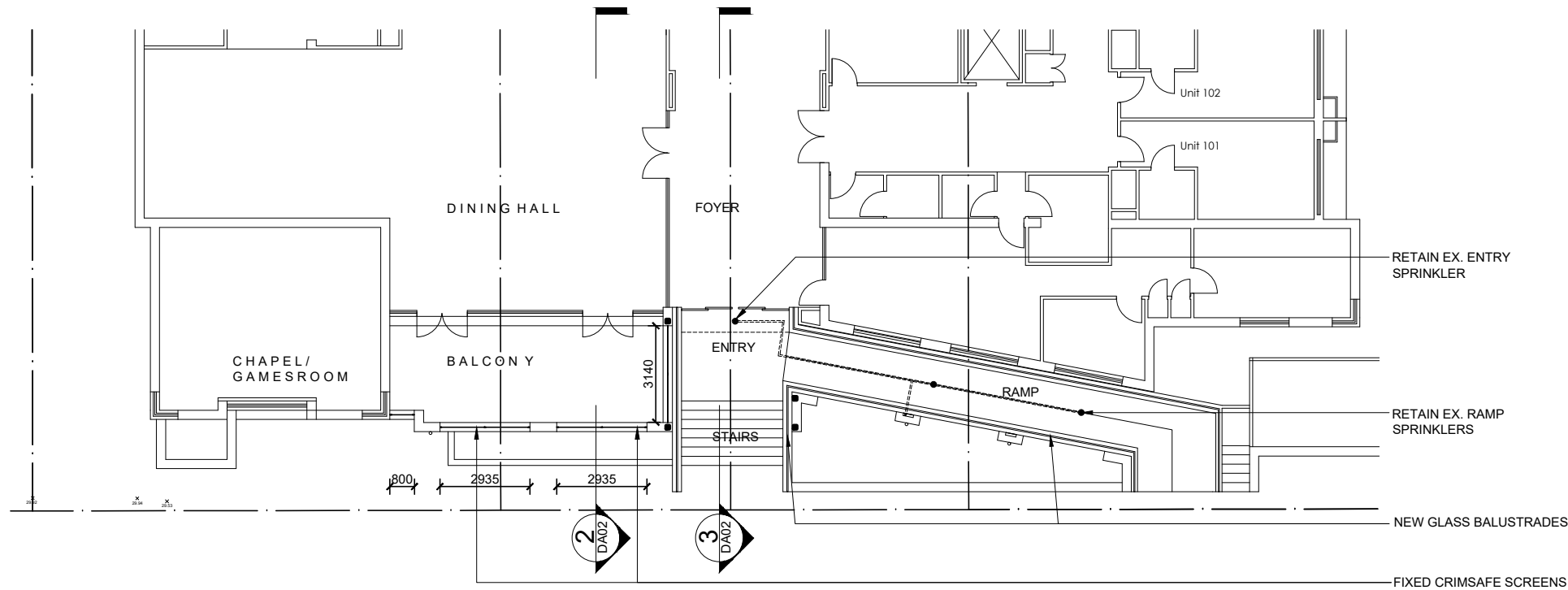
The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

30. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
31. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
32. Prior to issue of any Occupation Certificate a registered plumber or other suitably qualified professional is to check the existing stormwater system for the building and shall provide a certificate stating that the system is in a satisfactory and is in good working condition. If the existing system, or (any element of the system), cannot be certified as being satisfactory and in good working condition then the substandard section of the existing system is to be renewed.

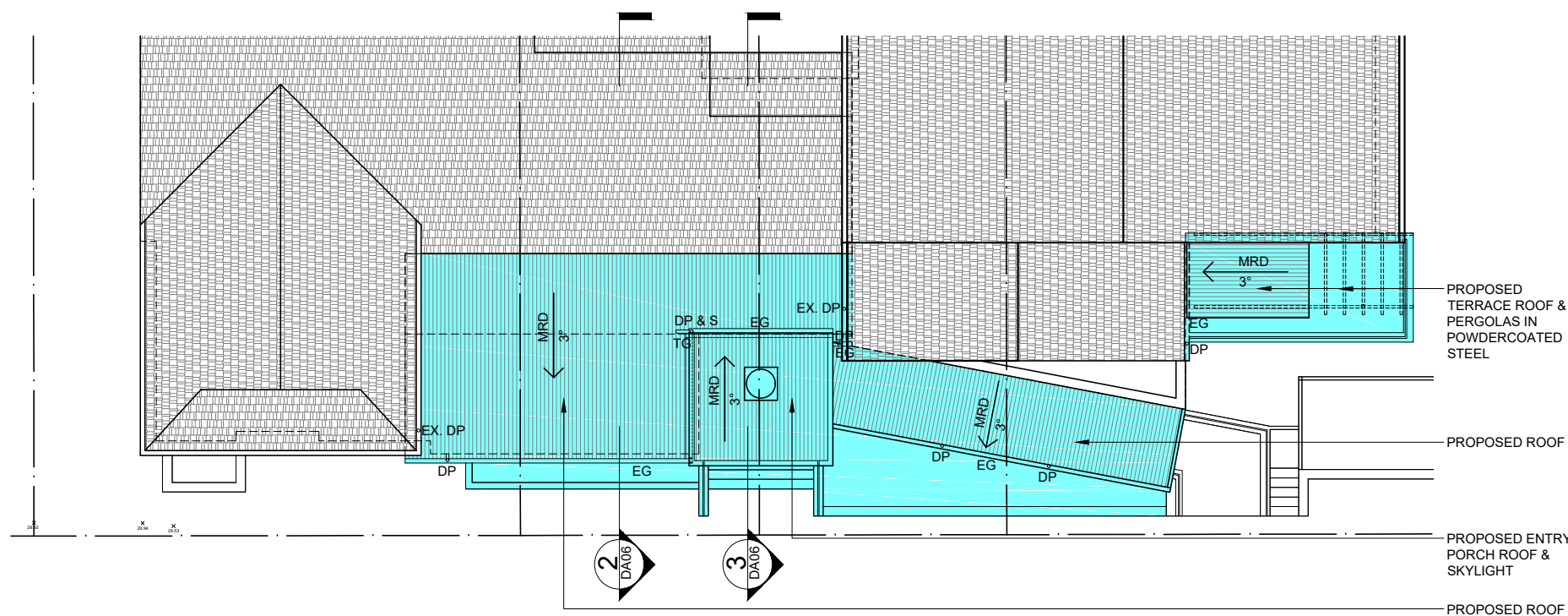
Where a Private Certifier issues an Occupation Certificate the Certificate mentioned in the above paragraph must be provided to Council.

## **Development consent advice**

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
  - choosing quiet equipment
  - choosing alternatives to noisy activities
  - relocating noise sources away from affected neighbours
  - educating staff and contractors about quiet work practices
  - informing neighbours of potentially noise activities in advance
  - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- c. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- d. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.



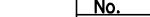


**1** LEVEL 1 PART PLAN - FRONT  
SCALE 1:200

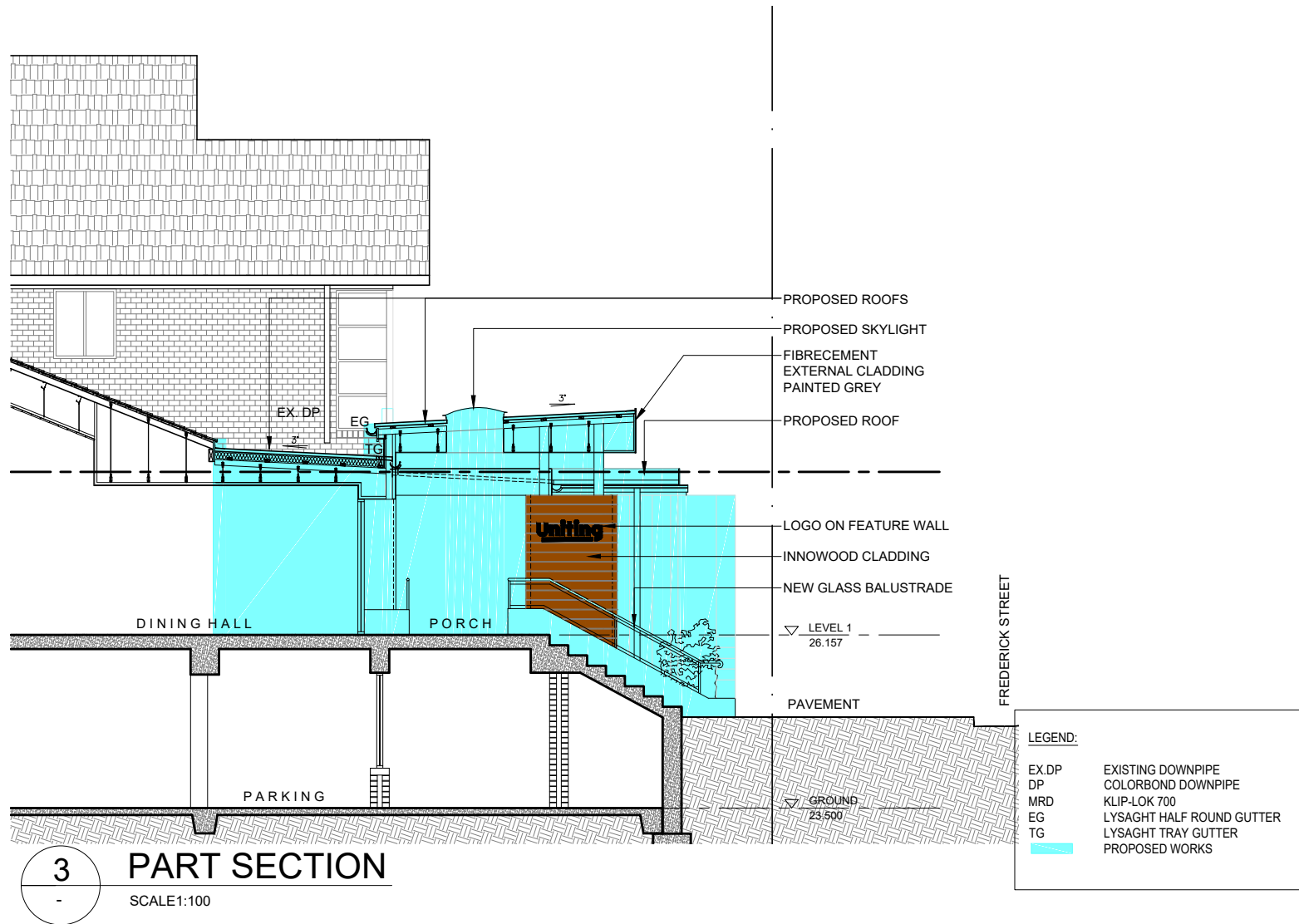
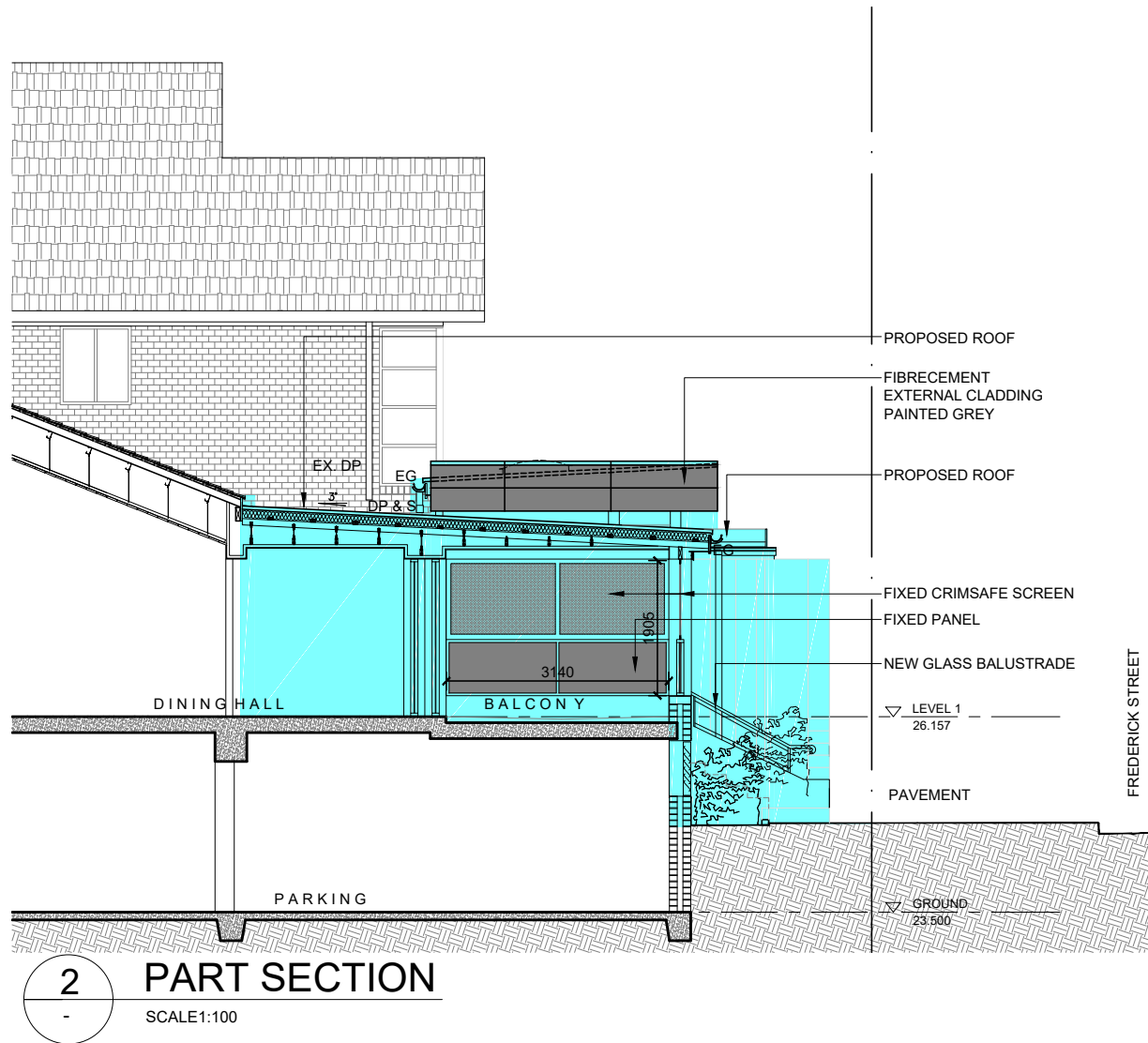
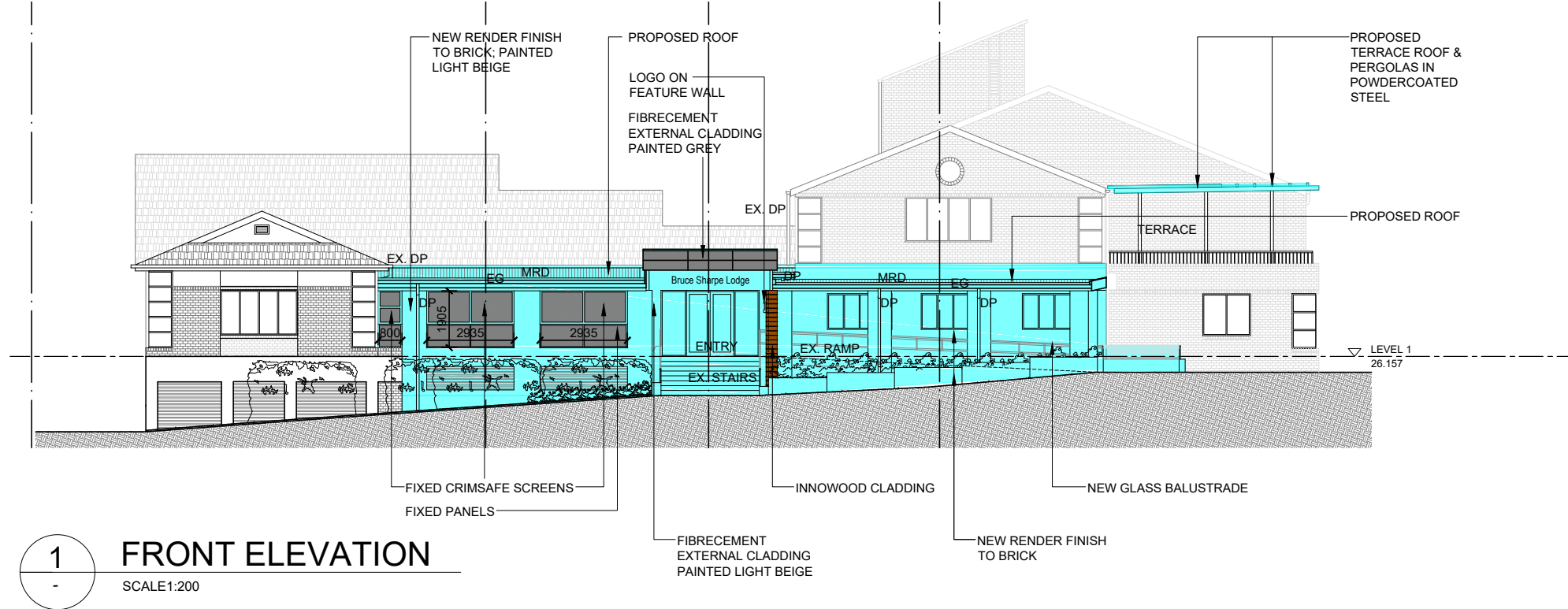




**2** ROOF PART PLAN - FRONT  
SCALE 1:200

LEGEND:	
EX.DP	EXISTING DOWNPIPE
DP	COLORBOND DOWNPIPE
MRD	KLIP-LOK 700
EG	LYSAGHT HALF ROUND GUTTER
TG	LYSAGHT TRAY GUTTER
	PROPOSED WORKS

<div><p>GRAN ASSOCIATES AUSTRALIA ARCHITECTS PTY LTD LEVEL 1, 597 DARLING STREET ROZELLE NSW 2059 PH: +61 2 9618 9437 FAX: +61 2 9618 6298 NOMINATED ARCHITECTS: PETER REED RAA, AIA NSW REG NO. 5377 ANTHONY KEMENY FRANA NSW REG NO. 4599</p></div>	<div>Client:</div> <div></div> <div>LEVEL 4, 222 PITT STREET SYDNEY, NSW 2000</div>	<div></div>	<table><tr><th>No.</th><th>Revision</th><th>Date</th><th>Checked</th></tr><tr><td>A</td><td>DEVELOPMENT APPLICATION</td><td>28/06/17</td><td>PR</td></tr></table>	No.	Revision	Date	Checked	A	DEVELOPMENT APPLICATION	28/06/17	PR	<table><tr><td>Scale(on A3 sheet):</td></tr><tr><td>Date: 28.06.17</td></tr><tr><td>Drawn: DS</td></tr><tr><td>Checked: PR</td></tr></table>	Scale(on A3 sheet):	Date: 28.06.17	Drawn: DS	Checked: PR	<table><tr><td>Project:</td><td>UNITING BRUCE SHARPE LODGE 102 FREDERICK STREET</td></tr><tr><td>Title:</td><td>PROPOSED DRAWINGS - PLANS</td></tr></table>	Project:	UNITING BRUCE SHARPE LODGE 102 FREDERICK STREET	Title:	PROPOSED DRAWINGS - PLANS	<table><tr><td>Drawing No:</td><td>DA-05</td></tr><tr><td>Proj. No.</td><td>Rev.</td></tr><tr><td>A1601</td><td>A</td></tr></table>	Drawing No:	DA-05	Proj. No.	Rev.	A1601	A
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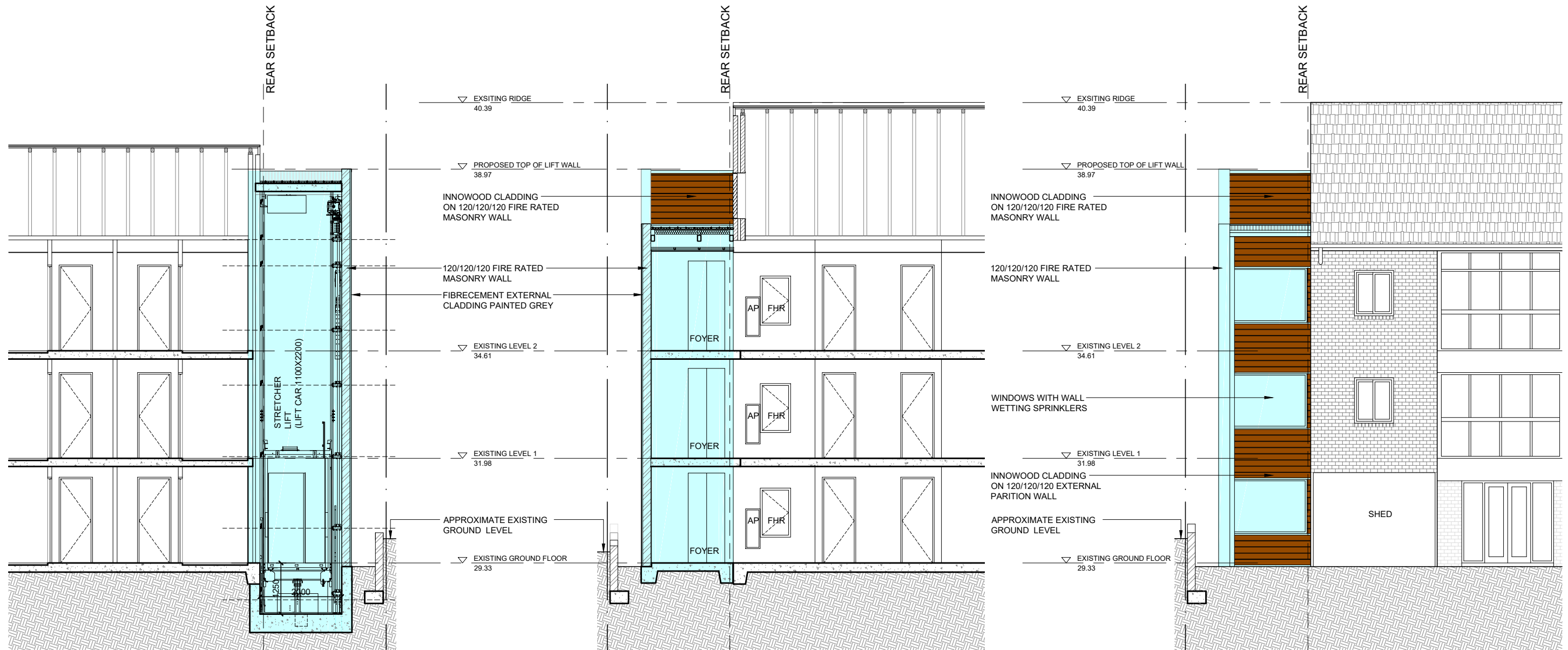


 GRAN ASSOCIATES AUSTRALIA ARCHITECTS LEVEL 1, 597 DARLING STREET ROZELLE NSW 2039 PH: +61 2 9618 9437 FAX: +61 2 9618 6298  NOMINATED ARCHITECTS: PETER REED RAA, AIA NSW REG No. 5377 ANTHONY KEMENY FRAA NSW REG No. 4099	Client:   LEVEL 4, 222 PITT STREET SYDNEY, NSW 2000	No. Revision Date Checked			Scale(on A3 sheet): Date: 28.06.17 Drawn: DS Checked: PR	Project: UNITING BRUCE SHARPE LODGE 102 FREDERICK STREET  Title: PROPOSED DRAWINGS - ELEVATION & SECTIONS	Drawing No:  DA-06	
		A	DEVELOPMENT APPLICATION	28/06/17	PR		Proj. No. A1601	Rev. A



**LEGEND:**

DP	COLORBOND DOWNPIPE
EG	LYSAGHT HALF ROUND GUTTER
MRD	KLIP-LOK 700
FH	FIRE HYDRANT
JB	JUNCTION BOX
SR	SERVICE RISER
	PROPOSED WORKS


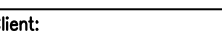
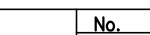


1 SECTION 1-1  
SCALE:1:100

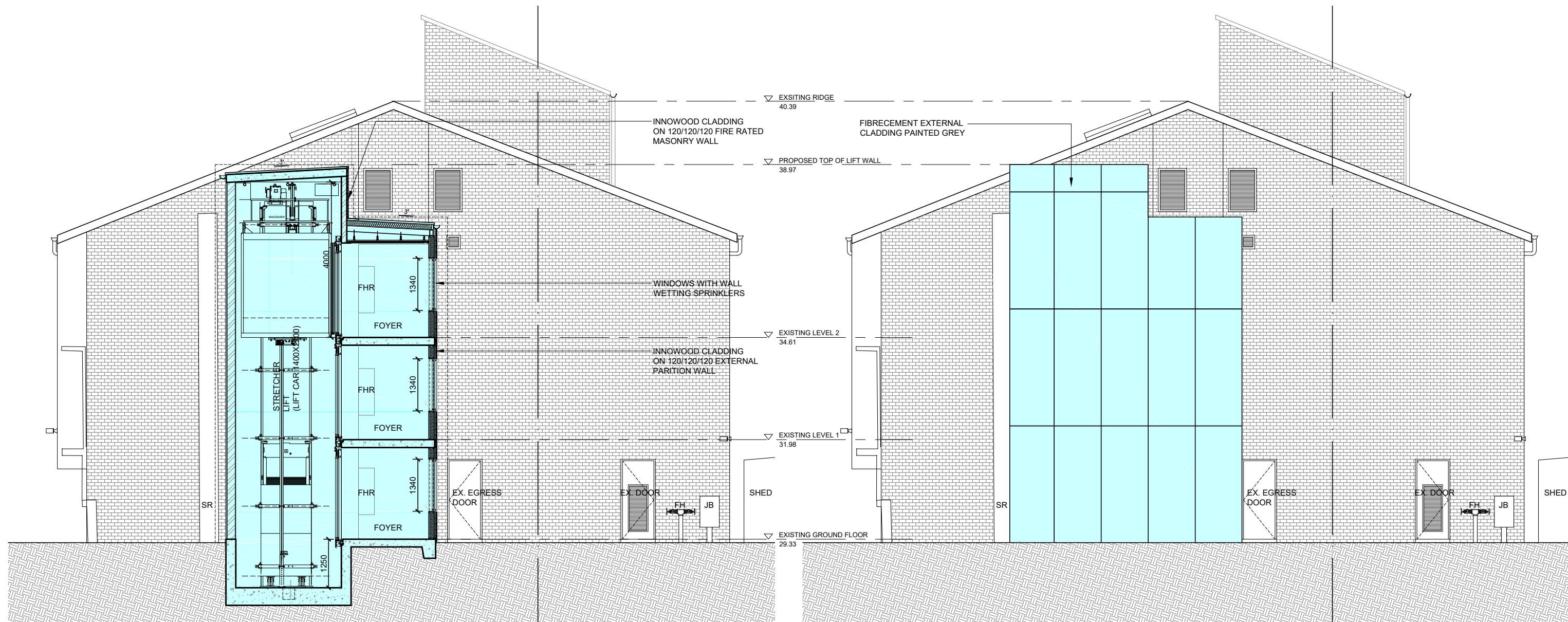
2 SECTION 2-2  
SCALE:1:100

3 SOUTH EAST ELEVATION  
SCALE:1:100

LEGEND:	
DP	COLORBOND DOWNPIPE
EG	LYSAGHT HALF ROUND GUTTER
MRD	KLIP-LOK 700
FH	FIRE HYDRANT
JB	JUNCTION BOX
SR	SERVICE RISER
	PROPOSED WORKS

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			Proj. No. Rev. A1601 A				








1 SECTION 3-3  
SCALE:1:100

2 SOUTH WEST ELEVATION  
SCALE:1:100

LEGEND:	
DP	COLORBOND DOWNPIPE
EG	LYSAGHT HALF ROUND GUTTER
MRD	KLIP-LOK 700
FH	FIRE HYDRANT
JB	JUNCTION BOX
SR	SERVICE RISER
	PROPOSED WORKS

<div><p>GRAN ASSOCIATES AUSTRALIA ARCHITECTS PTY LTD LEVEL 1, 597 DARLING STREET ROZELLE NSW 2039 PH: +61 2 9618 9437 FAX: + 61 2 9618 6288 NOMINATED ARCHITECTS: PETER REED RAA, AIA NSW REG No. 5377 ANTHONY KEMENY FRAA NSW REG No. 4599</p></div>	<div>Client: <p>LEVEL 4, 222 PITT STREET SYDNEY, NSW 2000</p></div>		No.	Revision	Date	Checked	Scale(on A3 sheet): AS SHOWN	Project: UNITING BRUCE SHARPE LODGE 102 FREDERICK STREET  Title: PROPOSED DRAWINGS - ELEVATION & SECTION	Drawing No:  DA-09	
			A	DEVELOPMENT APPLICATION	28/06/17	PR	Date: 28.06.17		Proj. No. A1601	Rev. A
			Drawn:	KM						
			Checked:	PR						



102 Frederick Street  
ROCKDALE NSW

Proposed alterations and additions to Uniting Bruce Sharpe  
Residential Care Facility

**Submission providing justification under clause 4.6(3) of  
Rockdale Local Environmental Plan 2011 for exception to  
development standards within clauses 40(4)(a), (b) and (c)  
of State Environmental Planning Policy (Housing for Seniors  
or People with a Disability) 2004**

Prepared for Gran Associated Australia Architects Pty Ltd  
Issue A - J17097  
21 October 2017

**A. Introduction**

1. This written request provides justification for contravention of clauses 40(4)(a), (b) and (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP) in response to clause 4.6(3) of *Rockdale Local Environmental Plan 2011* (RLEP2011) in relation to a development proposal for which a development application has already been made.
2. The development application that has already been made is DA2017/425, as submitted to Bayside Council.
3. DA2017/425 is for “alterations and additions to the Uniting Bruce Sharpe residential care facility” at 102 Frederick Street, Rockdale.
4. The development application is based upon architectural details by Gran Associates Australia Pty Ltd, including:
  - DA-00 Cover sheet (Rev A, dated 28/06/17)
  - DA-01 Existing Drawings – Plans (Rev A, dated 28/06/17)
  - DA-02 Existing Drawings – Elevations & Sections (Rev A, dated 28/06/17)
  - DA-03 Existing Drawings – Plans (Rev A, dated 28/06/17)
  - DA-04 Existing Drawings – Elevations (Rev A, dated 28/06/17)
  - DA-05 Proposed Drawings – Plans (Rev A, dated 28/06/17)
  - DA-06 Proposed Drawings – Elevation & Sections (Rev A, dated 28/06/17)
  - DA-07 Proposed Drawings – Plans (Rev A, dated 28/06/17)
  - DA-08 Proposed Drawings – Elevation & Sections (Rev A, dated 28/06/17)
  - DA-09 Proposed Drawings – Elevation & Sections (Rev A, dated 28/06/17)
  - DA-10 Existing Shadow Diagrams Winter Solstice (Rev A, dated 28/06/17)
  - DA-11 Proposed Lift Shadow Diagrams Winter Solstice (Rev A, dated 28/06/17)
  - DA-12 Existing Shadow Diagrams March Equinox (Rev A, dated 28/06/17)
  - DA-13 Proposed Lift Shadow Diagrams March Equinox (Rev A, dated 28/06/17)
5. A separate written justification is submitted seeking contravention of the density standard contained in clause 4.4(2) of RLEP2011.
6. Part B of this written request describes the site and its locality and the proposed development.
7. Part C of this written request sets out the relevant town planning controls, including how the proposal departs from Clause 4.4(2).
8. Part D of this written request addresses clause 4.6(3)(a).
9. Part E of this written request addresses clause 4.6(3)(b).
10. Part F of this written request addresses clause 4.6(4) and (5).
11. Part G of this written request provides concluding comments.

**B. The site and its locality, the proposed development and the proposed non-compliance**

12. The site is 102 Frederick Street, Rockdale (Figure 1) and has the real property description of Lot 79, DP190666; Lot B, DP436106; Lot A, DP436106; and Lot 77, DP1353. The property is square-shaped and has an area of 2,080.5 square metres, with a width and depth of 45.72 metres.



*Figure 1: Subject site, highlighted in yellow (Source: Six Maps)*

13. Existing on the site is the Uniting Bruce Sharpe Lodge (Figure 2), which is a residential care facility. Also on the site is part of an independent living complex. The other part of the independent living complex is on a separate site, adjoining to the north at 114 Frederick Street, which is operated in conjunction with the aged care facilities on the subject site.



*Figure 2: Uniting Bruce Sharpe Lodge, as viewed from Frederick Street (from a raised footpath on the opposite side)*



14. The site is within an area characterised by a mix of low and medium-high density residential uses.
15. To the north of the site is the independent living complex referred to above (Figure 3).



*Figure 3: Independent living units at 114 Frederick Street, as viewed from Frederick Street*

16. To the south is a vacant property that was formerly occupied by a church until that church burned down in 2016.
17. Opposite are single storey and two storey dwelling houses.
18. To the west is 43 Watkin Street, where there is a complex of residential flat buildings, being three-storey walk-up type buildings (Figure 3).



*Figure 4: Subject site to the rear, viewed from the car park of 43 Watkin Street, with one of the residential flat buildings on that site being visible to the right*



19. The proposed development is for alterations and additions to the existing building – specifically to parts of the building that are used as a residential care facility. No works are proposed to the independent living units.
20. The proposed works include two main components.
21. One of the components of the proposed development involves substantially cosmetic modifications to the street-facing façade, involving no changes to gross floor area.
22. The other component of the proposed development involves an extension to the rear so as to accommodate lifts that are capable of accommodating beds, along with a foyer/landing adjacent to the lift at each level so that a bed can be located there to allow it to be moved into the lift.
23. The lift extension will comprise three levels. It will be located within the rear setback area, where a paved area is currently located, and will have a width of 5.8 metres. It will be 9.72 metres in height above the ground level in that area of the subject site.
24. The proposed lift and foyer will have a gross floor area of 9.4 square metres at each level, totaling 28.2 additional square metres. The proposal will increase the existing gross floor area from 2,868.5 square metres to 2,896.7 square metres.

**C. The town planning controls and the proposed contravention of clause 4.4(2)**

25. The principal environmental planning instrument that is relevant to the site is *Rockdale Local Environmental Plan 2011*. The site is zoned R2 Low Density Residential under that instrument. The proposed development is also subject to *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP). The proposed development is submitted pursuant to the Seniors SEPP, under which it is permitted with consent and is defined as a “residential care facility”.
26. Clause 40(4) of the Seniors SEPP provides three development standards that are applicable to the proposed development because the subject site is within a residential zone within which residential flat buildings are not permitted.
27. Development standard (a) under clause 40(4) is:  
*the height of all buildings in the proposed development must be 8 metres or less, and*
28. The proposed development has a height of 9.72 metres, and will therefore exceed development standard (a) by 1.72 metres. That is 21.5 percent of a compliant height.
29. Development standard (b) under clause 40(4) is:  
*a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated*

*development to which this Policy applies) must be not more than 2 storeys in height, and*

30. The proposed development comprises three storeys and therefore breaches that development standard by one storey.

31. Development standard (c) under clause 40(4) is:

*a building in the rear 25 percent area of the site must not exceed 1 storey in height.*

32. The proposed lift addition is within the rear 25 percent area of the site and comprises three storeys. It therefore exceeds that development standard by two storeys.

#### **D. Consideration of clause 4.6(3)(a) of RLEP2011**

33. Clause 4.6(3)(a) of RLEP2011 provides as follows:

*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...*

34. The NSW Land and Environment Court case *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* has established principles relevant to the preparation of clause 4.6(3) justification submissions that may be summarised as:

- The justification must demonstrate (amongst other things) that circumstances exist particular to circumstances of this proposed development on the subject site;
- The justification must demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case by reference to other ways or matters that set out in clause 4.6(4)(a)(ii), meaning other than that the proposal achieves the objectives of the development standard and the objectives of the zone.

35. It would be unreasonable and unnecessary to require compliance with clauses 40(4)(a), (b) and (c) in this instance because:

- The height of the existing development is 13.04 metres and the adjacent part of the building to the proposed lift structure is 11.14 metres. The lift element is 9.72 metres in height, extends only 2.105 metres beyond the 11.14 metre part of the building and is only 5.8 metres wide. It is merely an ancillary element that is required for the functionality of the building and it will not be perceived from any adjoining property as being any larger than the existing structure behind it;

- The proposed lift element is required to meet contemporary occupational health and safety standards to allow the proper operation of the established residential care facility, which was first constructed in 1977. It would be unreasonable to prevent the proposed lifts from being constructed for that purpose when it is a necessary upgrade to meet required standards. In that context, it would be unreasonable to require alternative solutions such as locating the lift entirely within the building, as doing so would be highly disruptive to the existing residential care facility and because the proposed lift structure is significantly lower than the main part of the building;
- The proposed lift element does not cause any unreasonable or significant amenity impacts and does result in improved visual privacy impacts and also produces a better thermal efficiency outcome by removing west-facing windows and providing south-facing windows instead. The overshadowing impacts caused by the proposed lift structure would be absolutely minimal. The acoustic impacts of the proposed lift are demonstrated to be acceptable. In those circumstances, and in the circumstances in which the lift is a necessary upgrade to the 1977 residential care facility, it would be unreasonable to require compliance with the height standards. Requiring compliance would be unnecessary because the proposed development does not cause any discernible negative impacts;

#### **E. Consideration of clause 4.6(3)(b) of RLEP2011**

36. Clause 4.6(3)(b) of RLEP2011 provides as follows:

*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)...*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

37. Environmental planning grounds justifying the proposed contravention include:

- The height permitted on the adjoining property to the west, at 43 Watkin Street, is 14.5 metres. Compared to the height permitted on that site, noting that that site forms the immediate context of the part of the subject site where the proposed addition is proposed, the proposed heights and number of storeys is not unreasonable;
- The proposed height non-compliance will not be perceived as part of the streetscape;

- The proposed height is not associated with any unacceptable environmental impact. The proposal involves only miniscule additional overshadowing compared to the existing development. The proposal will be seen against the backdrop of the existing development, which is larger and higher than the proposed extension. The proposal therefore makes little difference. Furthermore, the proposed addition predominantly presents to a car-parking area and only presents to adjoining residential units to a limited extent;
- When balanced against the benefits of the proposal to the operation of the residential care facility, the proposed minimal impacts of the proposal are acceptable; and
- It would be unreasonable to pursue the alternative of accommodating the proposed lift from within the existing building because that would be disruptive to the fabric of the existing residential care facility and would not represent the orderly and economic use of land, which is one of the objects of the Act set out in Part 5(a)(ii).

#### **F. Consideration of clause 4.6(4) of RLEP2011**

38. Clause 4.6(4) of RLEP2011 provides as follows:

*Development consent must not be granted for development that contravenes a development standard unless:*

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

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives within the zone in which development is proposed to be carried out, and*

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

39. Matter (a)(i) is addressed above.

40. In relation to matter (a)(ii), the objectives of the standard contained in clause 40(4)(a) of the Seniors SEPP are not directly stated. The objective of clause 40(4)(b) is stated in an accompanying note as being:

*...to avoid an abrupt change in the scale of development in the streetscape.*

That note does not form part of the instrument but is taken to be indicative of the intent of the standard.

41. The objective of clause 40(4)(c) is not directly stated.

42. It would be expected that the intent of the height standards would be:

- To ensure compatibility with the character of the locality;

- To minimise amenity impacts;
- In the case of 40(4)(b) and (c), to ensure that the development transitions to the lower scale of surrounding developments.

43. In this instance, the proposed non-compliance is only perceived at the rear of the building when viewed from within the residential flat building complex at 43 Watkin Street. The proposed development is not visually incompatible with that development because the works will be perceived against the backdrop of already higher, existing development. It therefore will not be more visually bulky than existing development, or not to any significant degree. The proposed lift structure will merely be an ancillary element added to the existing building and at a lower scale.

44. The proposed development is not out of scale with the scale of development at 43 Watkin Street, to which it presents. Therefore, the proposed development is not out of scale with the existing development on the subject site and is not out of scale with the development to which it presents.

45. The proposed development does not cause any discernible amenity impacts and actually improves upon the current visual privacy impacts.

46. The proposal therefore achieves the reasonably anticipated objectives of the standard.

47. It is also appropriate to have regard to the aims of the Seniors SEPP. In that regard, the aims are:

- (1) *...to encourage the provision of housing (including residential care facilities) that will:*
  - (a) *increase the supply and diversity of residences that meet the needs of seniors and people with a disability, and*
  - (b) *make efficient use of existing infrastructure and services, and*
  - (c) *be of good design.*
- (2) *These aims will be achieved by:*
  - (a) *setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
  - (b) *setting out design principles that should be followed to achieve built form that responds to the characteristics of the site and its form, and*
  - (c) *ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*

48. The proposal is consistent with (1)(a) and (b) because it allows the retention of the existing residential care facility without the loss of rooms that would be caused if the proposed lift had to be located internally.
49. In relation to (b), the proposal is of good design because it is below the height of the existing building, achieves a better than existing visual privacy and thermal efficiency outcome, and is not larger than required to serve its purpose.
50. In relation to 2(a), that matter is not relevant to the present matter.
51. In relation to 2(b), the proposal is, within the submitted amended statement of environmental effects, assessed in accordance with the design principles contained in the Seniors SEPP.
52. In relation to 2(c), that matter is not relevant to the present matter.
53. In relation to the objectives of the R2 zone under RLEP2011, consideration of those objectives is as follows:
- *To provide for the housing needs of the community in a low density residential environment.*
  - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
  - *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*
54. The proposed development does not increase the bulk and scale of the development presenting to dwellings within low density areas along Frederick Street. The proposed development increases height in presentation to an R4 High Density development at 43 Watkin Street. In any case, the proposal doesn't significantly alter the perception of scale on the subject site when viewed from that 43 Watkin Street because the proposed lift structure is perceived against a backdrop of the larger main building. The proposal is therefore generally neutral in that regard, excepting that the proposal results in improved visual privacy impacts.
55. The proposed development enhances the existing residential care facility, which is a facility or service to meet the day to day needs of some of the residents of the locality.
56. The proposal does not cause unacceptable impacts on the character or amenity of the area, for reasons set out elsewhere in this statement.
57. In relation to clause 4.6(4)(b), clause 4.6(5) of RLEP2011 provides as follows:

*In deciding whether to grant concurrence, the Secretary must consider:*

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*



- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

58. The proposal does not result in any State or regionally significant matters.

59. The proposal does not breach any public interest consideration. The proposal will not set a precedent, because the circumstances of this matter are unique to the site. To the contrary, the proposal is in the public interest because it will address occupational health and safety issues within the established residential care facility.

#### **G. Conclusion**

60. Upon the above grounds, it is considered that the proposal satisfies the criteria for the proposed variation to be supported.



Matthew Benson  
Principal - MB Town Planning  
21 October 2017



102 Frederick Street  
ROCKDALE NSW

Proposed alterations and additions to Uniting Bruce Sharpe  
Residential Care Facility

**Submission providing justification under clause 4.6(3) of  
Rockdale Local Environmental Plan 2011 for exception to  
clause 4.4(2) of that instrument**

Prepared for Gran Associated Australia Architects Pty Ltd  
Issue A - J17097  
21 October 2017

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## **A. Introduction**

1. This written request provides justification for contravention of clause 4.4(2) of *Rockdale Local Environmental Plan 2011* (RLEP2011) in response to clause 4.6(3) of that instrument in relation to a development proposal for which a development application has already been made.
2. The development application that has already been made is DA2017/425, as submitted to Bayside Council.
3. DA2017/425 is for “alterations and additions to the Uniting Bruce Sharpe residential care facility” at 102 Frederick Street, Rockdale.
4. The development application is based upon architectural details by Gran Associates Australia Pty Ltd, including:
  - DA-00 Cover sheet (Rev A, dated 28/06/17)
  - DA-01 Existing Drawings – Plans (Rev A, dated 28/06/17)
  - DA-02 Existing Drawings – Elevations & Sections (Rev A, dated 28/06/17)
  - DA-03 Existing Drawings – Plans (Rev A, dated 28/06/17)
  - DA-04 Existing Drawings – Elevations (Rev A, dated 28/06/17)
  - DA-05 Proposed Drawings – Plans (Rev A, dated 28/06/17)
  - DA-06 Proposed Drawings – Elevation & Sections (Rev A, dated 28/06/17)
  - DA-07 Proposed Drawings – Plans (Rev A, dated 28/06/17)
  - DA-08 Proposed Drawings – Elevation & Sections (Rev A, dated 28/06/17)
  - DA-09 Proposed Drawings – Elevation & Sections (Rev A, dated 28/06/17)
  - DA-10 Existing Shadow Diagrams Winter Solstice (Rev A, dated 28/06/17)
  - DA-11 Proposed Lift Shadow Diagrams Winter Solstice (Rev A, dated 28/06/17)
  - DA-12 Existing Shadow Diagrams March Equinox (Rev A, dated 28/06/17)
  - DA-13 Proposed Lift Shadow Diagrams March Equinox (Rev A, dated 28/06/17)
5. A separate written justification is submitted seeking contravention of height standards contained in clause 40(4) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP).
6. Part B of this written request describes the site and its locality and the proposed development.
7. Part C of this written request sets out the relevant town planning controls, including how the proposal departs from Clause 4.4(2).
8. Part D of this written request addresses clause 4.6(3)(a).
9. Part E of this written request addresses clause 4.6(3)(b).
10. Part F of this written request addresses clause 4.6(4) and (5).
11. Part G of this written request provides concluding comments.

**B. The site and its locality, the proposed development and the proposed non-compliance**

12. The site is 102 Frederick Street, Rockdale (Figure 1) and has the real property description of Lot 79, DP190666; Lot B, DP436106; Lot A, DP436106; and Lot 77, DP1353. The property is square-shaped and has an area of 2,080.5 square metres, with a width and depth of 45.72 metres.



*Figure 1: Subject site, highlighted in yellow (Source: Six Maps)*

13. Existing on the site is the Uniting Bruce Sharpe Lodge (Figure 2), which is a residential care facility. Also on the site is part of an independent living complex. The other part of the independent living complex is on a separate site, adjoining to the north at 114 Frederick Street, which is operated in conjunction with the aged care facilities on the subject site.



*Figure 2: Uniting Bruce Sharpe Lodge, as viewed from Frederick Street (from a raised footpath on the opposite side)*



14. The site is within an area characterised by a mix of low and medium-high density residential uses.
15. To the north of the site is the independent living complex referred to above (Figure 3).



*Figure 3: Independent living units at 114 Frederick Street, as viewed from Frederick Street*

16. To the south is a vacant property, that was formerly occupied by a church until that church burned down in 2016.
17. Opposite are single storey and two storey dwelling houses.
18. To the west is 43 Watkin Street, where there is a complex of residential flat buildings, being three-storey walk-up type buildings (Figure 3).



*Figure 4: Subject site to the rear, viewed from the car park of 43 Watkin Street, with one of the residential flat buildings on that site being visible to the right*

19. The proposed development is for alterations and additions to the existing building – specifically to parts of the building that are used as a residential care facility. No works are proposed to the independent living units.
20. The proposed works include two main components.
21. One of the components of the proposed development involves substantially cosmetic modifications to the street-facing façade, involving no changes to gross floor area.
22. The other component of the proposed development involves an extension to the rear so as to accommodate lifts that are capable of accommodating beds, along with a foyer/landing adjacent to the lift at each level so that a bed can be located there to allow it to be moved into the lift.
23. The lift extension will comprise three levels. It will be located within the rear setback area, where a paved area is currently located, and will have a width of 5.8 metres. It will be 9.72 metres in height above the ground level in that area of the subject site.
24. The proposed lift and foyer will have a gross floor area of 9.4 square metres at each level, totaling 28.2 additional square metres. The proposal will increase the existing gross floor area from 2,868.5 square metres to 2,896.7 square metres.

**C. The town planning controls and the proposed contravention of clause 4.4(2)**

25. The principal environmental planning instrument that is relevant to the site is *Rockdale Local Environmental Plan 2011*. The site is zoned R2 Low Density Residential under that instrument. The proposed development is also subject to *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP). The proposed development is submitted pursuant to the Seniors SEPP, under which it is permitted with consent and is defined as a “residential care facility”.
26. Clause 4.4(2) of RLEP2011 establishes a maximum permissible floor space ratio for the site of 0.5:1, as indicated on the *Floor Space Ratio Map*.
27. The existing development has a floor space ratio of 1.378:1. The proposed development would have a floor space ratio of 1.392:1. The proposed development would breach the density standard by 0.878:1, being by 1,828.25 square metres. The proposed density is 2.78 times the maximum permissible density under the control of 1,040.25 square metres. However, the proposed additional gross floor area is only 0.98 percent of the existing gross floor area.
28. Clause 48 of the Seniors SEPP provides that the consent authority cannot refuse the proposed development on the grounds of density and scale if the density and scale of the buildings is 1:1 or less. The density and scale of buildings is not 1:1 or less, and therefore the consent authority is not prevented from refusing the proposed development on the basis of its non-



compliance with clause 4.4(2) of RLEP2011. The proposal exceeds the 1:1 standard by 0.378:1. (Although the measurement of gross floor area under the Seniors SEPP is different, and includes external wall thicknesses whereas under RLEP2011 external wall thicknesses are excluded, proportionally the degree of exceedance is the same). Compared to the 1:1 standard, the proposed non-compliance is by 37.8 percent.

29. Although the 1:1 provision under the Seniors SEPP is a standard, it is necessary for the objection to the development standard to be to the RLEP2011 standard. That is because that standard is applicable, whereas the 1:1 standard only serves to prevent Council from refusing a development if it complies with that standard. If the proposed development does not comply with that standard, then Council is not prevented from refusing the development under clause 4.4(2). This written request therefore seeks to justify contravention of clause 4.4(2) rather than the Seniors SEPP standard.

#### **D. Consideration of clause 4.6(3)(a) of RLEP2011**

30. Clause 4.6(3)(a) of RLEP2011 provides as follows:

*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...*

31. The NSW Land and Environment Court case *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* has established principles relevant to the preparation of clause 4.6(3) justification submissions that may be summarised as:

- The justification must demonstrate (amongst other things) that circumstances exist particular to circumstances of this proposed development on the subject site;
- The justification must demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case by reference to other ways or matters that set out in clause 4.6(4)(a)(ii), meaning other than that the proposal achieves the objectives of the development standard and the objectives of the zone.

32. It would be unreasonable and unnecessary to require compliance with clause 4.4(2) in this instance because:

- The proposed contravention relates to only a small percentage increase in the established density of the site;

- The proposed contravention is necessary for occupational health and safety reasons, so as to allow residents to be moved in their beds and to allow beds to be properly moved;
- The proposed density is not associated with any unacceptable environmental impact. The proposal involves only miniscule additional overshadowing compared to the existing development. The proposal will be seen against the backdrop of the existing development, which is larger and higher than the proposed extension. The proposal therefore makes little difference. Furthermore, the proposed addition predominantly presents to a car-parking area and only presents to adjoining residential units to a limited extent;
- When balanced against the benefits of the proposal to the operation of the residential care facility, the proposed minimal impacts of the proposal are acceptable;
- The proposal results in an overall improvement in visual privacy because it removes existing windows facing towards the subject site and provides a window orientation to the south, perpendicular to 43 Watkin Street. That also has significant thermal benefits.
- It would be unreasonable to pursue the alternative of accommodating the proposed lift from within the existing building because that would be disruptive to the fabric of the existing residential care facility and would not represent the orderly and economic use of land, which is one of the objects of the Act set out in Part 5(a)(ii).

#### **E. Consideration of clause 4.6(3)(b) of RLEP2011**

33. Clause 4.6(3)(b) of RLEP2011 provides as follows:

*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)...*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

34. Environmental planning grounds justifying the proposed contravention include:

- Whilst the proposed contravention is to a 0.5:1 development standard, the town planning controls allow a density of 1:1 and the severity of the proposed contravention should be assessed against that standard;
- The density permitted on the adjoining property to the west, at 43 Watkin Street, is 1:1. Compared to the density on that site, noting that that site forms the immediate context of the part of the subject site where the proposed addition is proposed, the proposed density is not unreasonable; and

- The proposal provides a better town planning outcome than the existing development by removing windows that cause significant overlooking, whereas the proposed new windows will not directly face 43 Watkin Street, and by achieving a better energy efficiency outcome by changing the windows from a west-facing orientation to a south-facing orientation;
- The planning controls applicable to a residential flat development or to an independent living development would exclude the lifts from being counted as gross floor area. Whilst the lifts must technically be counted as gross floor area, they are a feature that in many forms of development may be excluded;
- The proposed lift structure does not contribute to the intensity of use.

#### **F. Consideration of clause 4.6(4) of RLEP2011**

35. Clause 4.6(4) of RLEP2011 provides as follows:

*Development consent must not be granted for development that contravenes a development standard unless:*

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

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives within the zone in which development is proposed to be carried out, and*

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

36. Matter (a)(i) is addressed above.

37. In relation to matter (a)(ii), consideration of the proposed development having regard to the objectives of the particular standard is as follows:

- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular or pedestrian traffic, in order to achieve the desired future character of Rockdale,*
- (b) to minimise adverse environmental effects on the use and enjoyment of adjoining properties,*
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.*

38. In relation to (a), the proposal has no effect on the overall intensity of the current use, because there is no increase in the number of beds or residents accommodated.

39. In relation to (b), the proposal results in an improvement to the current visual privacy impacts. The proposal does not give rise to unreasonable

visual bulk because it is seen against the backdrop of a larger building, and is therefore not perceived as a more bulky presence than already exists. The proposal results in only miniscule additional overshadowing, that will be barely perceptible. The proposal will not cause additional acoustic privacy impacts. The environmental effects of the proposed development are therefore acceptable notwithstanding the proposed non-compliance – the proposal represents an overall improvement in amenity impacts due to the removal of existing directly facing windows.

40. The proposed contravention in the development standard has no effect on the streetscape. The proposed streetscape upgrade will have a positive effect on the streetscape.

41. In relation to the zone objectives, consideration of the proposed development having regard to those is as follows:

- *To provide for the housing needs of the community in a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

42. The proposed development does not increase the bulk and scale of the development presenting to dwellings within low density areas along Frederick Street. The proposed development increases density in presentation to an R4 High Density development at 43 Watkin Street. In any case, the proposal doesn't significantly alter the perception of density on the subject site when viewed from that 43 Watkin Street because the proposed lift structure is perceived against a backdrop of the larger main building. The proposal is therefore generally neutral in that regard, excepting that the proposal results in improved visual privacy impacts.

43. The proposed development enhances the existing residential care facility, which is a facility or service to meet the day to day needs of some of the residents of the locality.

44. The proposal does not cause unacceptable impacts on the character or amenity of the area, for reasons set out elsewhere in this statement.

45. In relation to clause 4.6(4)(b), clause 4.6(5) of RLEP2011 provides as follows:

*In deciding whether to grant concurrence, the Secretary must consider:*

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*

(c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

46. The proposal does not result in any State or regionally significant matters.

47. The proposal does not breach any public interest consideration. The proposal will not set a precedent, because the circumstances of this matter are unique to the site. To the contrary, the proposal is in the public interest because it will address occupational health and safety issues within the established residential care facility.

**G. Conclusion**

48. Upon the above grounds, it is considered that the proposal satisfies the criteria for the proposed variation to be supported.

A handwritten signature in black ink, appearing to read 'Matthew Benson', with a stylized flourish at the end.

Matthew Benson  
Principal - MB Town Planning  
21 October 2017