



Land and Environment Court
New South Wales

Case Name: Goldfields Central Pty Ltd v Ku-ring-gai Council

Medium Neutral Citation: [2019] NSWLEC 1434

Hearing Date(s): 19-20 August 2019; 10 September 2019

Date of Orders: 13 September 2019

Decision Date: 13 September 2019

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:
(1) The appeal is upheld.
(2) Development Application No. 0152/18 for the demolition of all existing structures and construction of a seniors housing development at 149, 151 and 153 Livingstone Avenue, Pymble, is approved, subject to the conditions of consent at Annexure A.
(3) The exhibits, other than Exhibits 1, B, C and L, are returned.

Catchwords: DEVELOPMENT APPLICATION – seniors housing development – whether the proposal is consistent with the existing and future desired character of the locality

Legislation Cited: Environmental Planning and Assessment Act 1979
Land and Environment Court Act 1979
Heritage Act 1977
Ku-ring-gai Local Environmental Plan 2015
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Cases Cited: Project Ventures Developments Pty Ltd v Pittwater Council (2005) 141 LGERA 80; [2005] NSWLEC 191

Texts Cited: Department of Infrastructure, Planning and Natural

Resources, Seniors Living Policy: Urban design
Guidelines for Infill Development (March 2004)

Category: Principal judgment

Parties: Goldfields Central Pty Ltd (Applicant)
Ku-ring-gai Council (Respondent)

Representation: Counsel:
C McEwen SC (Applicant)
R O’Gorman-Hughes (Respondent)

Solicitors:
Pikes & Verekers Lawyers (Applicant)
Shaw Reynolds Lawyers (Respondent)

File Number(s): 2018/248443

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No. 0152/18 for the demolition of existing structures and construction of a seniors housing development comprising 18 self-contained dwellings, basement car parking and associated works (the proposal, shown in Ex L) at 149, 151 and 153 Livingstone Ave, Pymble (the site) by Ku-ring-gai Council (the Council).
- 2 The application is made pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors).
- 3 The appeal was subject to conciliation on 7 May 2018, in accordance with the provisions of s 34 of the *Land and Environment Court Act 1979* (LEC Act). As agreement was not reached, the conciliation conference was terminated, pursuant to s 34(4) of the LEC Act.
- 4 Leave was granted by the Court on 14 June 2019 for the applicant to amend the application by relying on amended drawings.
- 5 Leave was unopposed and granted by the Court on the first day of the hearing for the applicant to amend the application by relying on amended drawings (Ex

A) that reflected changes to the proposal agreed upon by the urban design and planning experts in their joint report (Ex 2).

- 6 Leave was unopposed and granted on the second day of the hearing for the applicant to rely on amended drawings (Ex L) which incorporated changes to the proposal agreed upon by the urban design and planning experts to address Council's contention regarding visual and acoustic privacy impacts on neighbouring properties in Annabelle Place and Inverallan Avenue and changes to the form of the roofs to reduce the volume of the roof over the central building.

Issues

- 7 The Council's contentions can be summarised as:
- The proposal is not in accordance with the provisions of SEPP Seniors as it is not of good design, pursuant to cl 2(1)(c) of SEPP Seniors. Adequate regard has not been given by the applicant in the design of the proposal to the principles set out in Division 2 of SEPP Seniors, pursuant to cl 32 of SEPP Seniors and the proposal is unsatisfactory having regard to Seniors Living Policy: Urban design Guidelines for Infill Development as referenced by cl 31 of SEPP Seniors.
 - The proposal is not consistent with the existing and desired future character of the locality because the presence of the central building form on the site is dominant and oversized with respect to the site area and landscaped character of the locality. The visual bulk of the development is excessive and manifests in an overdevelopment of the site, resulting in a building form that fails to achieve adequate visual amenity and neighbourhood character. The proposal is inconsistent with the low-density development character of the locality.
 - The design of the 'dog-leg' access corridor through the central building does not provide adequate site amenity.
- 8 The Council's contention that the proposal does not satisfy the car parking requirements of cl 50(h) of SEPP Seniors was resolved to Council's satisfaction by the imposition of a condition of consent requiring the rooms within each dwelling identified as a study not be enclosed by a door (condition 2C of the conditions of consent at Annexure A).
- 9 The Council's contention that the proposal results in unacceptable impacts on the privacy of the adjoining properties fronting Annabelle Crescent was resolved by agreed amendments made to the proposal, including changing the

position of windows and adding privacy screens to upper level balconies (shown in the amended plans in Ex L).

Interim Heritage Order over 149 Livingstone Avenue

- 10 The Council's contention that the demolition of the Federation style dwelling at 149 Livingstone Avenue is unacceptable because 149 Livingstone Avenue is the subject of an Interim Heritage Order (IHO) imposed by the Special Minister of State on 10 May 2019 (Ex H, NSW Government Gazette No 48 of 13 May 2019), pursuant to the provisions of Part 3 of the *Heritage Act* 1977, was not pressed (Ex H, letter from Shaw Reynolds to Pikes & Verekers dated 22 July 2019 and confirmed by Council's submission), following correspondence from the Department of Planning and Environment (the Department) sent to Ku-ring-gai Council and dated 30 June 2019 (Ex H, Annexure A).
- 11 The correspondence from the Department was in relation to the Council's request for a Gateway determination under the EPA Act in respect of the planning proposal to list 149 Livingstone Avenue as a local heritage item. The letter states that, following a detailed assessment of the proposal and consideration of the differing heritage experts' advice by the Department, the merit of listing the site as a heritage item is not sufficiently justified.
- 12 Following closing submissions, the hearing was adjourned until 10 September to allow time for the applicant to provide evidence that the Minister had revoked the IHO over 149 Livingstone Avenue. Without the revocation of the IHO, the proposal does not have the benefit of the terms of cl 50 of SEPP Seniors, which includes standards that cannot be used to refuse development consent, pursuant to cl 47 of SEPP Seniors. The applicant submitted on 10 September that the Minister had not yet revoked the IHO and the appeal was to be determined with the IHO in place.

The site and its context

- 13 The site is on the western side of Livingstone Avenue, to the north of Kendall Street.
- 14 The site shares a side boundary with the rear boundaries of 1, 3, 5, and 7 Annabelle Crescent, to the north-west. The pedestrian path which links Annabelle Crescent to Livingstone Avenue is to the north of the site.

- 15 Kendall Village Green, which contains public tennis courts, is to the south of the site.

The proposal

- 16 The proposal consists of four two storey dwellings each with a garage (Houses 14) fronting Livingstone Avenue, two single storey dwellings each with a garage (Houses 6 and 7) at the rear of the site and a two storey building (the central building) in the centre of the site containing 12 dwellings (LG01, G01 – G06 and 101 – 105). The proposal includes basement parking under the central building.

Planning framework

- 17 SEPP Seniors applies to the site at cl 4(1)(a)(i). The aims of SEPP Seniors, to encourage the provision of housing that will increase the supply and diversity of residences that meet the needs of seniors or people with a disability and to make efficient use of existing infrastructure and services and to be of good design, will be achieved by setting aside local planning controls that would prevent the development of housing for seniors and people with a disability, at cl 2(2) of SEPP Seniors.

- 18 “Height” is defined at cl 3 of SEPP Seniors as:

height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

- 19 A “self-contained dwelling” is defined at subcl 13(1) of SEPP Seniors, as:

(1) General term: “self-contained dwelling”

In this Policy, a **self-contained dwelling** is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.

- 20 A consent authority must not consent to a development application made pursuant to SEPP Seniors unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of SEPP Seniors, at cl 32.

- 21 The site is zoned R2 Low Density Residential pursuant to Ku-ring-gai Local Environmental Plan 2015 (LEP 2015). A Residential Flat Building is prohibited in the R2 zone under LEP 2015, as it is not a nominate use permitted with or without consent. Clause 40 of SEPP Seniors includes development standards for seniors housing developments and at subcl (4), standards for seniors housing developments proposed in a residential zone where residential flat buildings are not permitted, as follows:

40 Development standards—minimum sizes and building height

(1) General

A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.

(2) Site size

The size of the site must be at least 1,000 square metres.

(3) Site frontage

The site frontage must be at least 20 metres wide measured at the building line.

(4) Height in zones where residential flat buildings are not permitted

If the development is proposed in a residential zone where residential flat buildings are not permitted—

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

Note. 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).

- (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

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

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

- 22 Clause 47 of SEPP Seniors is in the following terms:

47 Part does not apply to certain development applications relating to heritage affected land

Nothing in this Part applies in relation to the granting of consent to a development application made pursuant to this Chapter for the carrying out of

development on land to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies.

- 23 Clause 50 of SEPP Seniors sets out the development standards that if met by a proposal on land not identified as 'heritage affected land' pursuant to cl 47, cannot be used to refuse the application, as follows:

50 Standards that cannot be used to refuse development consent for self-contained dwellings

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds—

- (a) **building height:** 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),
- (b) **density and scale:** if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,
- (c) **landscaped area:** if—
 - (i) in the case of a development application made by a social housing provider—a minimum 35 square metres of landscaped area per dwelling is provided, or
 - (ii) in any other case—a minimum of 30% of the area of the site is to be landscaped,
- (d) **Deep soil zones:** if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres,
- (e) **solar access:** if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,
- (f) **private open space for in-fill self-care housing:** if—
 - (i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and
 - (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area,

Note. The open space needs to be accessible only by a continuous accessible path of travel (within the meaning of AS 1428.1) if the dwelling itself is an accessible one. See Division 4 of Part 4.

(h) **parking:** if at least the following is provided—

(i) 0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider, or

(ii) 1 car space for each 5 dwellings where the development application is made by, or is made by a person jointly with, a social housing provider.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent.

Public submissions

24 Six resident objectors provided evidence at the commencement of the onsite view. Their concerns can be summarised as:

- The proposal compromises the privacy of the residential properties in Annabelle Place which share a rear boundary with the site.
- The demolition of 149 Livingstone Avenue is unacceptable because this dwelling is known as a “heritage house” within the locality and is appreciated as a good example of Federation style architecture. The dwelling has a long association with the Hamilton family of Pymble.
- The removal of the camphor laurel trees along the northern boundary is unacceptable and will have a detrimental impact on the landscaped character of the area and the amenity of neighbours.
- The removal of trees on the site is excessive and unacceptable.
- The proposal has insufficient parking for future residents and their visitors.
- The proposal will compromise the safety of school children walking past the site.
- The proposal does not comply with the requirement to be within 400m of a bus stop as it is at least 600m from the centre of the site and the location of the foyer to the nearest bus stop.

25 The Council submitted that cl 26(2)(b)(i) of SEPP Seniors, requiring public transport to be located at a distance of not more than 400m from the site, is met.

26 The applicant submitted that the removal of the camphor laurel trees along the northern boundary of the site was supported by Mr Bird (Ex 4, f 474 Landscape

Referral), who recommended that the remaining camphor laurel trees T2 – T5 also be removed to allow replenishment plantings of suitable tree species.

Expert evidence

- 27 The applicant relied on the expert evidence of Mr Andrew Minto (planning), Mr Paul Buljevic (architecture and urban design), Ms Lindsay Perry (accessibility), Mr Matthew Beament (civil engineering) and Mr Russell Kingdom (arboriculture).
- 28 The Council relied on the expert evidence of Mr Joshua Daniel (planning), Mr Kieran McInerney (architecture and urban design), Mr Ross Guerrera (engineering) and Mr Geoff Bird (arboriculture).
- 29 The experts prepared joint reports for urban design and planning (Ex 2) and engineering and landscaping (Ex 3). Only the planning and urban design experts were required to give evidence.

Consideration

Design of the proposal

- 30 The Council's fundamental concern is that the central building, containing 12 units and basement parking, is contrary to the established low density residential character of the locality.
- 31 Mr Buljevic, the architect of the proposal, justified the design of the proposal, including housing 12 units in the central building, as a means to achieving the density and scale envisaged by SEPP Seniors while maintaining a large proportion of the site as landscaped area and deep soil planting, because the central building frees up ground area by removing parking bays. In his view, the central building is articulated and modulated to ameliorate its scale and this is also reflected in the form of the pitched roof. Mr Buljevic maintained that the central building will not be viewed in the round, but is carefully sited in the central portion of the site and will form a backdrop when viewed from the public domain or surrounding properties. I accept Mr Buljevic's evidence.
- 32 The planning and urban design experts broadly agreed that the desirable elements of the locality are the dominant landscaped setting of dwellings,

established gardens, tree canopies, generous setbacks, pitched roofs and so on.

- 33 I am satisfied that the proposal is compatible with the existing character and desired future character of the locality. Importantly, the SEPP Seniors aims are achieved by setting aside local planning controls that would prevent the development. The FSR development standard for the site under LEP 2015 is 0.3:1 and the proposal has a FSR close to 0.5:1. As a consequence, the proposal will not match the existing density and scale of surrounding development.
- 34 I accept and agree with the applicant's submission that an application for a seniors housing development, made under SEPP Seniors, can include attached housing in the form proposed in the central building and that a multi-dwelling building is envisaged by SEPP Seniors and accounted for in a residential zone where residential flat buildings are not permitted by the development standard at subcl 40(4), requiring a seniors housing development to have a maximum height of 8m consistent with the definition of height in SEPP Seniors, a maximum height of 2 storeys adjacent to a boundary of the site and not exceed one storey in the rear 25% area of the site. The proposal satisfies these requirements. The satisfaction of these requirements generally makes the overall form of the development compatible with its low density residential environment.
- 35 The Council's criticisms of the proposal as having a driveway to the rear of the four houses fronting Livingstone Avenue for access to garages and that the central building will be visible from the public domain between the four houses seeks to deny the form of the proposal as a multi-dwelling housing development. The proposal provides 18 dwellings on one large site with a single driveway entry and a main pedestrian entry spine into to the site, so it will not, and nor should it, mimic a row of single family dwellings on individual allotments with front and back gardens. The proposal should be honestly legible as a multi-dwelling housing development, but also compatible with its low density residential environment.

- 36 I am satisfied that the design of the proposal, with small, unattached dwellings at the front and rear of the site and a central building containing 12 units over basement parking, set within generous landscaped grounds, is an appropriate form on the site and that it is compatible with the existing surrounding development within the meaning of compatibility articulated by the then Senior Commissioner in *Project Ventures Developments Pty Ltd v Pittwater Council* (2005) 141 LGERA 80; [2005] NSWLEC 191 at [22] as 'capable of existing together in harmony'.
- 37 The proposal's setbacks of 3-6m on the northern side, the retention of vegetation along the northern boundary and the agreed added measures in Ex L will ensure that the privacy of neighbouring properties is maintained. I accept Mr McInerney's evidence that the agreed amendments to the proposal in Ex L to ameliorate any privacy impacts on neighbouring properties have necessarily reduced the amenity of the affected units.
- 38 I am satisfied that the view of the proposal from Kendall Village Green is acceptable. The building envelope of the proposal is sited consistently with the topography of the site and its context and this is reflected in the height of the proposal complying with the standard at subcl 40(4). Kendall Village Green is surrounded by two storey development and the central building of the proposal will appear as a two storey development on its site further up the rise of the gentle hill with a generous setback from the shared boundary. The proposal includes a landscaped corridor between the central building and the rear houses which aligns with Kendall Village Green and which will provide a significant break in the building envelope of the proposal when viewed from the south. Kendall Village Green has generous proportions and will not be dwarfed by the proposal.
- 39 I accept the agreed submission of the parties that the stormwater design will be adequately provided for following the fulfilment of the deferred commencement condition 1 requiring the applicant to obtain a drainage easement to Inverallan Avenue within 24 months of the grant of consent.
- 40 Crime prevention at cl 37 of SEPP Seniors was not raised as an issue by the Council and I am satisfied that the proposal provides suitable and legible

transition zones between the public domain and individual houses and units and that there are ample opportunities for landscaped areas to be overlooked by the residents of the proposal.

- 41 The Council did not raise an issue following the provision of the Disability Access Report (Ex G) and did not require Ms Perry for cross-examination regarding the accessibility of the site. I accept the conclusions of the report.
- 42 The Council did raise a design issue regarding the layout of the access through the central building. According to the Council's submission, the access through the site is convoluted, as a resident of Houses 1-4 or a visitor wanting to access the communal open space area to the rear of the central building must use the central spine access into the site and enter into the foyer of the central building on the ground floor and take the lift or the stair down a half level to the landing to access the ramp that continues west to the communal open space. I do not accept that this route is particularly convoluted for a resident of the development, as residents will quickly become familiar with accessing different areas of the site. A resident would likely meet their guest at their own unit or house prior to moving to the communal open space. In any case, it is not necessarily desirable that a visitor can find their way to the communal open space unassisted.
- 43 I am satisfied that the proposal demonstrates that adequate regard has been given to the principles set out in Division 2 of SEPP Seniors, pursuant to cl 32 of SEPP Seniors.

Development standards in cl 50 of SEPP Seniors

- 44 I accept the applicant's submission that the proposal meets the standards at cl 50 of SEPP Seniors. No issue was raised by the Council in relation to the standards in cl 50 of SEPP Seniors (other than a dispute about the calculation of gross floor area):
- the height of the proposal is 8m or less;
 - the landscaped area is 37.6%;
 - the deep soil zone is 27%;
 - the solar access requirement is met by 89% of units/houses;

- the private open space of 15sqm or balcony of 10sqm requirement for multi-storey buildings are met; and
- the 0.5 car spaces for each bedroom in the proposal is met (on the basis of condition 2C requiring rooms marked “study” are not to have doors).

45 I am satisfied that the proposal is consistent with the standards for seniors housing development of self-contained dwellings for building height, landscaped area, deep soil zones, solar access, private open space and parking.

The floor space ratio of the proposal is less than 0.5:1

46 The planning experts disagreed on the calculation of the gross floor area (GFA) of the proposal. The planning experts agreed that the cleaner’s toilet on the lower ground floor in the north-eastern corner of the basement parking should have been included in the calculation of GFA, under the definition of GFA in SEPP Seniors, and had not been. The toilet is 4.5sqm.

47 The GFA is noted as 3356sqm (Ex L, DA501). According to Mr Daniel, the addition of the toilet area results in a GFA which is 3.5sqm in excess of the 0.5:1 FSR standard in cl 50 of SEPP Seniors. According to Mr Minto, the proposal achieves a FSR of less than 0.5:1 because the calculation of GFA according to the definition of GFA in SEPP Seniors at cl 3 excludes “ancillary storage space” at (b) and the garbage storage areas within the garages of Houses 1-4 which have a total area of 12.96sqm should have been excluded from the area contributing to GFA and were not.

48 The relevant terms of the definition of GFA in SEPP Seniors, which differs from the definition in the Standard Instrument LEP, is as follows:

gross floor area means the sum of the areas of each floor of a building, where the area of each floor is taken to be the area within the outer face of the external enclosing walls (as measured at a height of 1,400 millimetres above each floor level):

(a) excluding columns, fin walls, sun control devices and any elements, projections or works outside the general lines of the outer face of the external wall, and

(b) excluding cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts, and

(c) excluding car parking needed to meet any requirements of this Policy or the council of the local government area concerned and any internal access to such parking, and

- 49 The Council submits that the definition should be interpreted so as to gain its 'colour and meaning' from the textual context. Interpreting (b) in this way, "ancillary storage space" refers to storage space associated with cooling towers, machinery and plant rooms and does not refer to left over area within the garage used for the storage of garbage bins.
- 50 I am satisfied that the FSR of the proposal is less than 0.5:1 because the area within the garages of Houses 1-7 that has contributed to the calculation of GFA should have been excluded as "car parking needed to meet any requirements of this Policy" under (c) of the definition of GFA in SEPP Seniors. The internal dimensions of the garages of Houses 1, 6 and 7 are 5.5m x 5.8m, and Houses 2, 3 and 4 are 5.7m x 5.8m. These areas provide a car parking space and shared zone under the standard AS2800. The GFA has been calculated, as shown by the shaded area on DA500 of Ex L, to include a margin of 300mm on either side of the internal floor space of the garages in Houses 1, 6 and 7 and 500mm on one side and 300mm on the other of the garages in Houses 2, 3 and 4. These areas result in 3.48sqm for Houses 1, 6 and 7 and 4.64sqm for Houses 2, 3 and 4 contributing to the calculation of GFA.
- 51 The margins around the edge of the garages allow for circulation and the margin on one side of the garages in this proposal allows some space for car doors to be opened before they hit the internal face of the garage wall. A garage necessarily requires a greater floor area with margins for circulation beside the parking area to be occupied by the car, when compared to car parking space in a car park without side obstructions, because a garage requires the circulation area to be included in its floor area and a car parking space within a car park can "borrow" the adjacent space and area between columns for circulation. For this reason, I am satisfied that the internal areas of the garages of Houses 1-7 are required to meet the car parking provision, consistent with the exclusion identified by the definition of GFA in SEPP Seniors, and it is not necessary for a margin on either side of the floor space of the garages to contribute to the calculation of GFA.
- 52 The GFA for the proposal, excluding the internal floor areas of the garages in Houses 1-7, is 3336.14sqm, which yields a FSR of 0.497:1. I am satisfied that

the density and scale of the proposal is appropriate and consistent with the density and scale envisaged by SEPP Seniors for a seniors housing development of self-contained dwellings.

Conclusion

53 I am satisfied that the proposal is in accordance with the provisions of SEPP Seniors and that adequate regard has been given by the applicant in the design of the proposal to the principles set out in Division 2 of SEPP Seniors, pursuant to cl 32 of SEPP Seniors.

54 I am satisfied that the design of the proposal has recognised the desirable elements of the location's current character, being the dominant landscaped setting to dwellings and that the proposal maintains reasonable neighbourhood amenity. I am satisfied that the proposal is compatible with the existing character and the desired future character of the locality. The relationship of the height and form of the buildings, reasonable setbacks from boundaries and generous landscaping will result in a development that is greater in scale and density to, but compatible with, surrounding development and a seniors housing development that maintains the visual dominance of the landscaped setting.

Orders

55 The orders of the Court are:

- (1) The appeal is upheld.
- (2) Development Application No. 0152/18 for the demolition of all existing structures and construction of a seniors housing development at 149, 151 and 153 Livingstone Avenue, Pymble, is approved, subject to the conditions of consent at Annexure A.
- (3) The exhibits, other than Exhibits 1, B, C and L, are returned.

Susan O'Neill

Commissioner of the Court

[Annexure A \(332 KB, pdf\)](#)

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