IRF24/396

Plan finalisation report - PP-2022-658

Lourdes Retirement Village – 95-97 Stanhope Road, Killara

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Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview of Planning Proposal

The planning proposal (**Attachment A1**), as lodged and exhibited, seeks to amend the Ku-ring-gai Local Environmental Plan (LEP) 2015 to:

- rezone the site from R2 Low Density Residential to R3 Medium Density Residential;
- increase the maximum height of buildings from 9.5m to a range of heights including 9.5m, 11.5m, 14.5m, 16m, 20.5m and 22m;
- increase the maximum floor space ratio (FSR) from 0.3:1 to 0.75:1; and
- include a site-specific clause to prevent bonus FSR provisions for seniors housing in the Housing SEPP from applying to the site.

The proposed planning controls aim to facilitate the renewal of the Lourdes Retirement Village to provide a new seniors housing development comprising 141 independent living units, 110 bed aged care facility and 63 private dwellings.

Following exhibition and in response to submissions, amendments to the planning proposal were proposed by the proponent (**Attachment G1**) to:

- rezone part of the site to north east and southern boundary for C2 Environmental Conservation, previously proposed to be R3 Medium Density Residential;
- remove development standards in the proposed C2 zone;
- increase the maximum floor space ratio (FSR) from 0.3:1 to 0.85:1 on the residential zoned land; and
- revise the concept scheme to remove 4 dwellings, reducing the number of townhouses to 59 dwellings.

The post exhibition report prepared by the Agile Planning team, also made recommendations for additional amendments to the planning proposal (**Attachment G9**) including to:

- amend the Land Zoning Map to retain R2 Low Density Residential zone for the area of the proposed seniors development;
- amend the Height of Buildings Map to reduce the height to 9.5m across the Residential Aged Care Facility (RACF) and Independent Living Units (ILU) fronting Stanhope Road and provide a more appropriate height transition; and
- amend the Terrestrial Biodiversity Map to include the areas of the site to be zoned C2 Environmental Conservation.

The Sydney North Planning Panel, as the Planning Proposal Authority (PPA) considered the planning proposal including the proposed amendments on 15 December 2023. The Panel determined not to proceed with the planning proposal and to request the Minister's delegate to determine that the matter not proceed on 20 December 2023 (**Attachment H**). The Panel decision requested a gateway alteration be submitted to the Department as the Local Plan Making Authority to determine the planning proposal no longer proceed.

A detailed overview of the planning history of the proposal is provided at **Attachment B.**

The Department has considered the Panel's decision and it is recommended that the planning proposal does not to proceed to a LEP amendment. The Department recommends a revised planning proposal is prepared and submitted to Council for consideration addressing the Panel

decision, post-exhibition report recommendations and the matters raised in this report. This will allow further community consultation on an appropriate outcome for the site based on bushfire risk, biodiversity management and relationship of any future redevelopment to the local character and context.

1.2 Site description

Table 1 Site description

Site Description	The planning proposal (**Attachment A1**) applies to land at 95-97 Stanhope Road, Killara (being Lot 21 and 22 in DP634635).
Type	Site
Council / LGA	Ku-ring-gai Council

The site is located at 95-97 Stanhope Road, Killara **(Figure 1)** and has a total area of approximately 5.25 hectares, comprising two lots (Lot 21 & 22 DP 634645), with one continuous street frontage of approximately 380m along Stanhope Road.

The site is located approximately 1.4km east of Killara railway station and 1.7km north-east of the Lindfield local centre and railway station **(Figure 2)**. There is an existing local bus route (556) which services the site providing a 9 minute bus journey to Lindfield town centre and railway station. Lindfield provides a number of local services and retail uses including a supermarket, post office, pharmacy, library and medical facilities. Lindfield station is served by the Sydney Trains T1 and T9 lines which provide access to Chatswood, the Sydney CBD and beyond.

Figure 1: Subject site (source: Nearmap, 2022)

The existing Lourdes Retirement Village (**Figure 3)** was constructed in the 1980s and comprises:

- A seniors development including:
  - 108 Independent Living Units (ILUs) comprising attached and semi-detached dwellings;

- 49 serviced apartments (serviced self-care housing);
- 83-bed Residential Aged Care Facility (RACF); and
- administration buildings and prayer chapel (Headfort House), community centre and pool facilities, lawn and BBQ facilities.

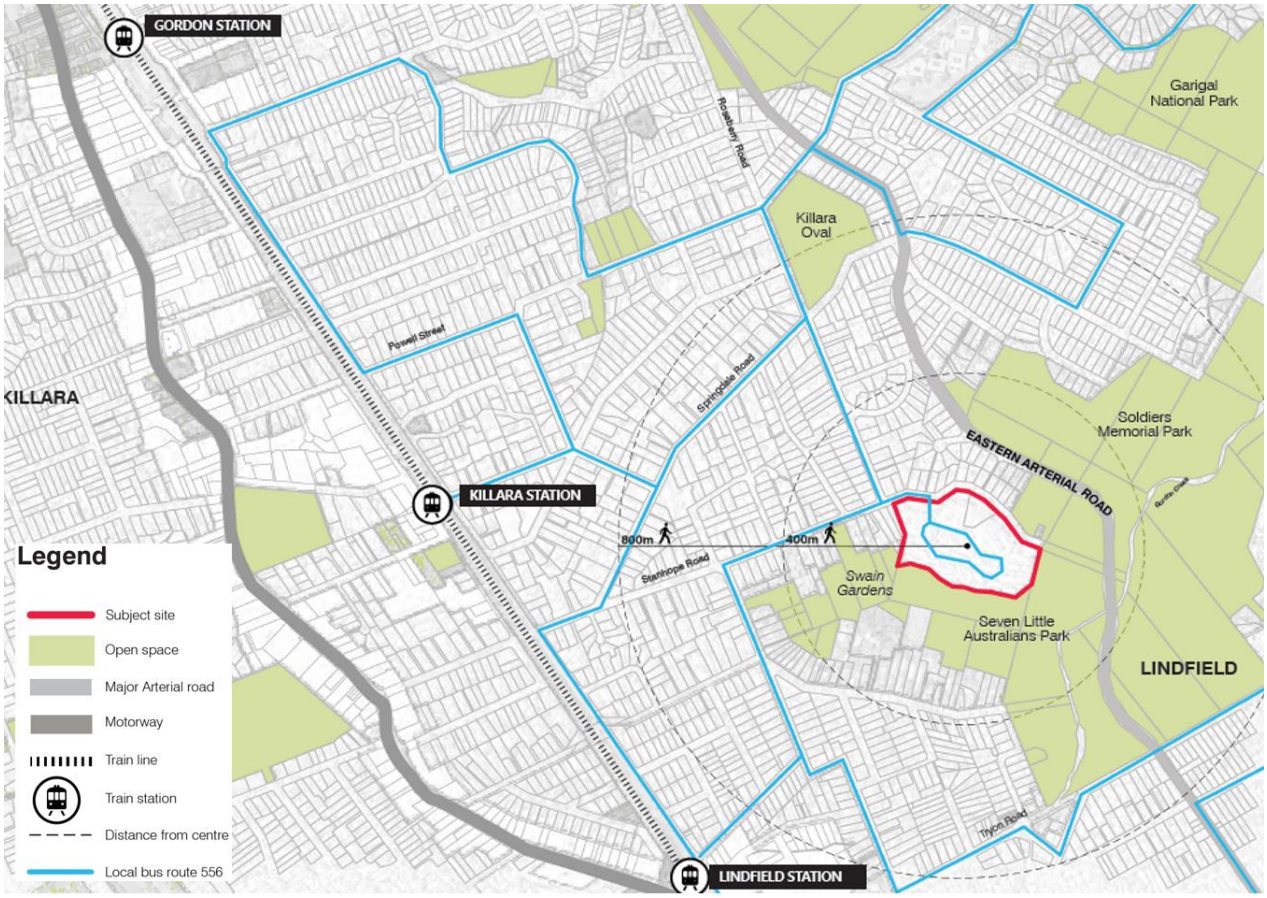


Figure 2: **Site location (source: Plus Architecture, Aug 2022)**

Existing vehicular access is provided to the site via Stanhope Road at the main entrance along the site's northern boundary to First Avenue, an internal road that provides access to the Residential Aged Care Facility, administration buildings and some of the Independent Living Units. There are also two secondary access points provided along Stanhope Road towards the eastern boundary for emergency and resident parking access, and towards the western boundary for parking access for the existing chapel and community buildings.

The site's southern and eastern boundaries are delineated by Lourdes Avenue, a second internal road providing access to the independent living units in the lower portion of the site and paved buffer to the adjoining bushland.

The surrounding land uses adjacent to the site include:

- Substantial bushland to the south and east. Heritage listed Seven Little Australians Park and Swain Gardens are located within this bushland area.
- Low density residential area to the north and west, predominately single or two storey dwellings. The area has an established landscaped context with generous setbacks, large lots and mature trees.

Figure 3: Existing land uses and built form (source: Plus Architecture, Aug 2022)

The existing buildings on the site are generally low-rise buildings and range from one to two storeys in height.

The site has a bushland setting, with a band of native vegetation in the front setback to Stanhope Road and scattered landscaping and tree planting across the site.

Parts of the site's topography are steep, falling approximately 13m from the northern boundary along Stanhope Road and the southern boundary along Lourdes Avenue. The topography presents a challenging context for accessibility across the site with the gradient of streets and pathways limiting pedestrian connectivity and accessibility.

The flatter areas of the site are shown in blue in **Figure 4** and are located in the northern portion of the site on higher ground.

The site is affected by bushfire risk **(Figure 5)**, with the majority of the site identified as a vegetation buffer on the Bushfire Prone Land map. The adjacent bushland to the site's south, east and north-east are identified as vegetation Category 1, considered to be the highest risk for bush fire under the NSW RFS Guide for Bush Fire Prone Land Mapping.

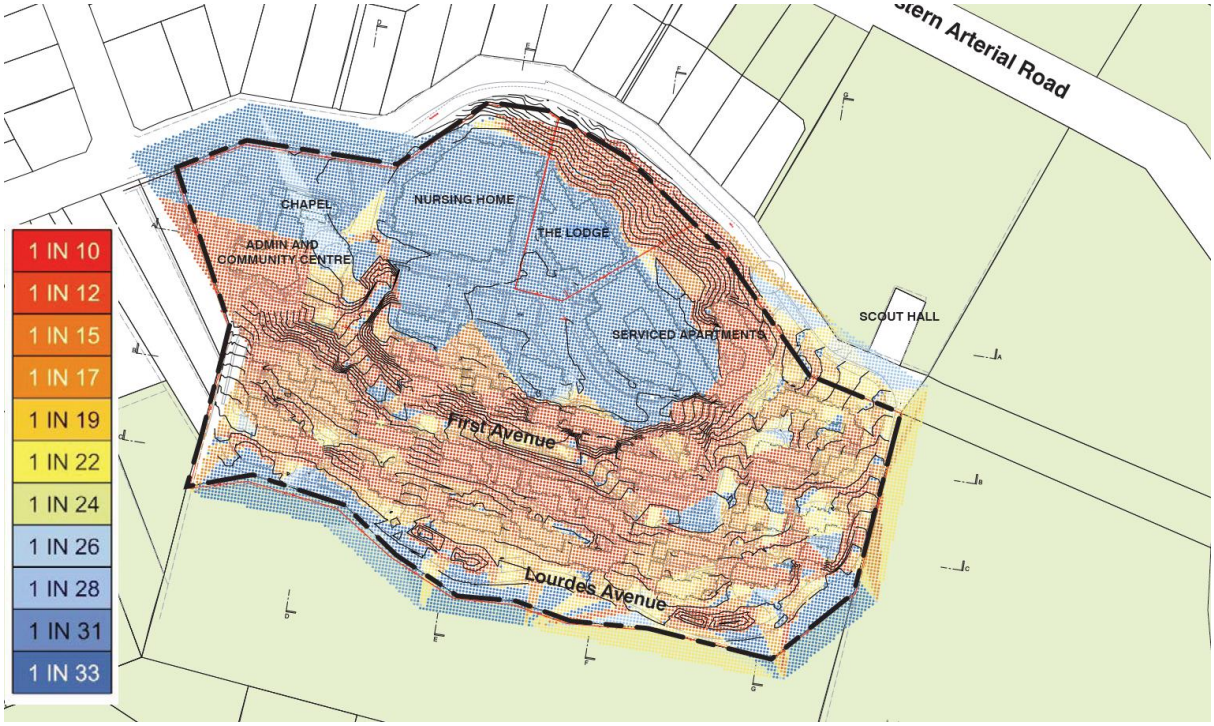


Figure 4: Site gradients (source: Architectus as cited by Plus Architecture, Aug 2022)

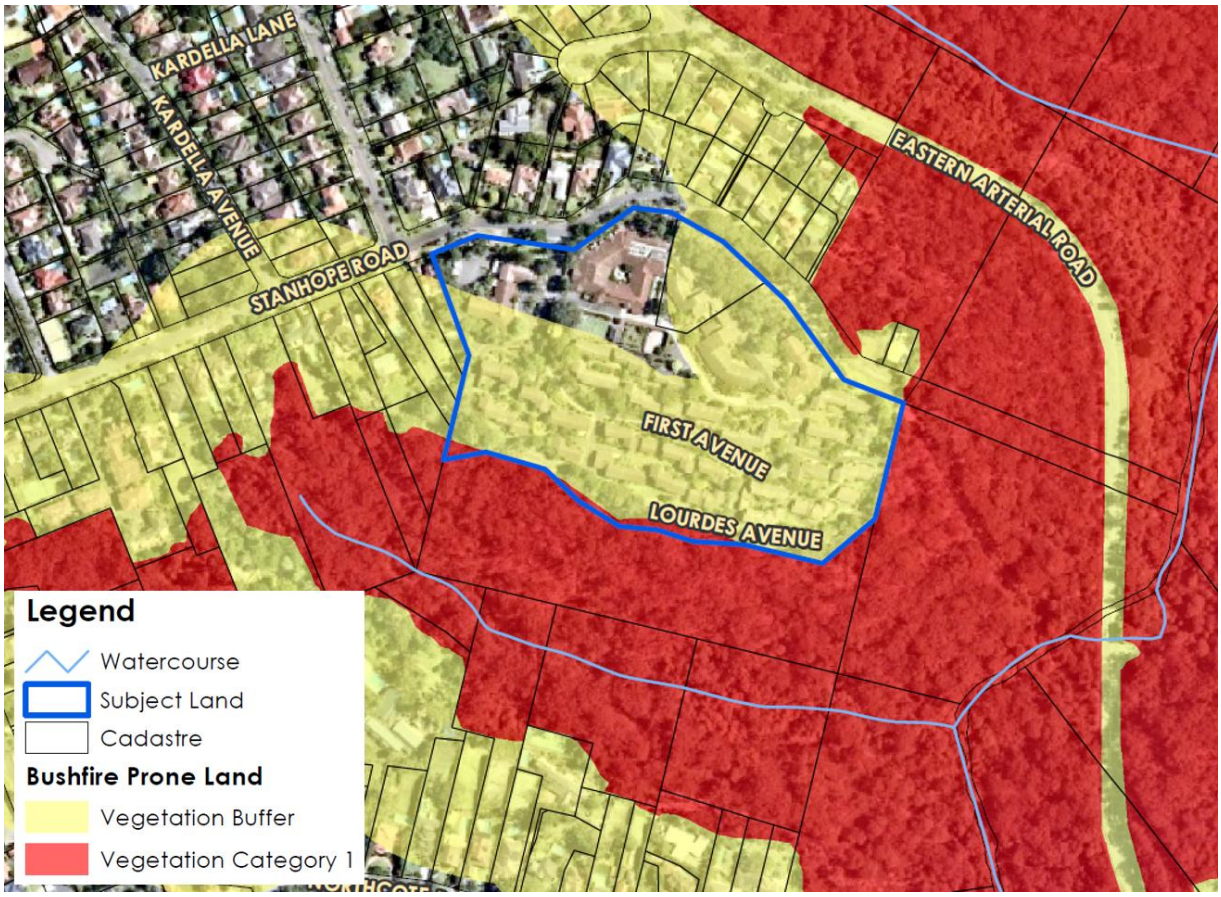


Figure 5: Map showing bushfire prone land (source: Blackash Bushfire Consulting, Feb 2022)

1.3 Purpose of plan

The planning proposal aims to amend the Ku-ring-gai LEP to:

- rezone the site from R2 Low Density Residential to R3 Medium Density Residential;
- increase the maximum height of buildings from 9.5m to allow a range of heights including 9.5m, 14.5m, 16m, 20.5m and 22m;
- increase the maximum floor space ratio (FSR) from 0.3:1 to 0.75:1; and
- introduce a site-specific clause to exclude the application of bonus FSR provisions for seniors housing under clause 84 and 87 of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

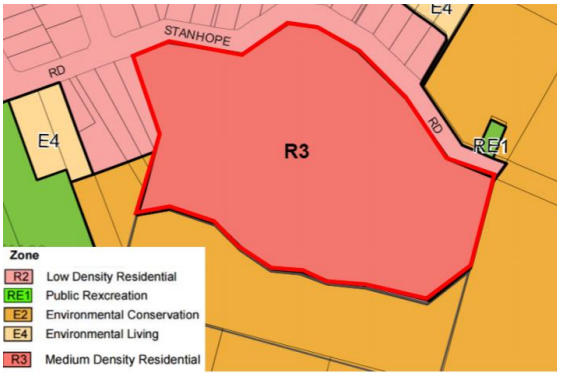
The proposed development standards will facilitate redevelopment of the Lourdes Retirement Village, providing a 110-bed residential aged care facility, 141 independent living units and 63 private townhouses.

Table 2 below outlines the existing and proposed controls, as they have evolved over the progression of the proposal to post exhibition.

Table 2 Existing and proposed controls

Controls/Built form	Existing	Proposed (Exhibition) (3 Aug 2022)	Proposed (Post exhibition) (20 Nov 2023)
Zone	R2 Low Density Residential (Permits dwelling houses)	R3 Medium Density Residential (Permits seniors housing, multi dwelling housing and attached dwellings).	R3 Medium Density Residential; C2 Environmental Conservation (Permits seniors housing, multi dwelling housing and attached dwellings).
Maximum Height of Buildings	9.5m	9.5m; 11.5m; 14.5m; 16m; 20.5m and 22m	9.5m; 11.5m; 14.5m; 16m; 20.5m and 22m
Maximum FSR	0.3:1	0.75:1	0.85:1
Site-specific clause	N/A	Excludes operation of clause 84 and 87 of SEPP (Housing)	Excludes operation of clause 84 and 87 of SEPP (Housing)
Total Gross Floor Area	15,872sqm	39,679sqm	38,650sqm
Number of dwellings	83-bed (RACF) 157 dwellings: • 108 ILUs • 49 serviced housing	110-bed Residential Aged Care Facility (RACF) 204 dwellings: • 141 ILUs • 63 private townhouses	110-bed Residential Aged Care Facility (RACF) 200 dwellings: • 141 ILUs • 59 private townhouses

The current and exhibited maps for the site include land use zoning, height of buildings and floor space ratio and are provided in **Figures 6 – 13**.

Existing maps	Exhibited maps
	
Fig 6: Zoning map (KLEP 2015)	**Fig 7: Exhibited zoning map**

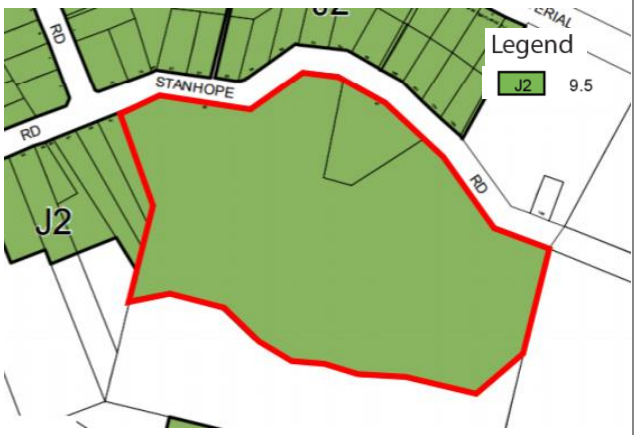
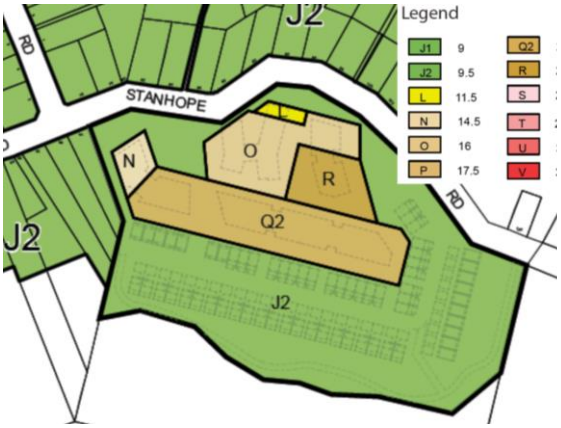

	

Fig 9: Height of buildings map (KLEP 2015)	**Fig 10: Exhibited Height of buildings map**
	
Fig 12: FSR map (KLEP 2015)	**Fig 13: Exhibited FSR map**

Post exhibition updates to maps considered by the Panel

Amendments post-exhibition	

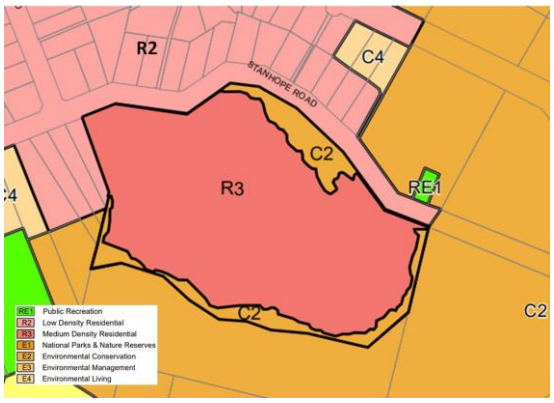
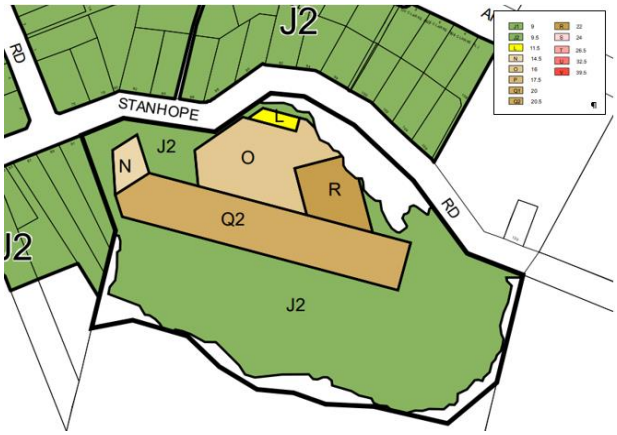

	

Fig 14: Land zoning updates post exhibition	Fig 15: Height of Buildings map updates post exhibition

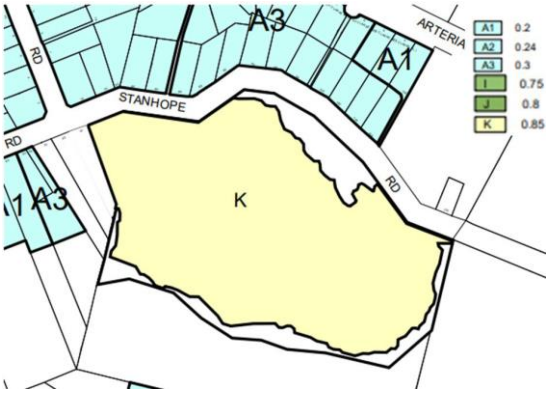



Fig 16: FSR map updates post exhibition	

Concept Scheme/Master Plan as exhibited and amended post exhibition

An illustrative master plan (**Figure 17**) in the exhibited planning proposal outlines the key features of the proposal with the tallest buildings up to 6 storeys including the residential aged care facility centrally located within the site, and stepping down to 3 storeys for the medium density townhouses to the south of the site.

The proposed new road network provides an upgrade to the main street loop road with entry off Stanhope Road and the creation of a secondary entry from Stanhope Road to the east which separates the seniors housing and medium density housing.

Car parking is proposed to be located within a single basement level under the aged care facility accessed via the new loop road, to provide 255 parking spaces for seniors housing, 126 off-street parking spaces for medium density townhouses and 17 on street parking spaces throughout the site.

The proponent revised the concept scheme at post-exhibition (**Figure 18**) to address concerns raised in community and agency submissions.

Figure 67: Illustrative Master Plan – exhibited (source: Plus Architecture, Aug 2022)

The proponent amended the master plan post exhibition in response to submissions as follows:

- additional vegetation is proposed to be retained and setbacks increased along Stanhope Road and along the southern boundary
- application of a C2 Environmental Conservation zone to the southern boundary and north-east frontage;
- further integration of the ILU building on the north east boundary facing Stanhope Road;
- retained tree canopy and reduced number of trees to be removed from 233 to 188;
- reduction of townhouses from 63 to 59; and
- the realignment of the eastern access road.

Figure 18: Illustrative Master Plan – revised post-exhibition (source: Plus Architecture, Nov 2023)

1.4 Background - Rezoning review and planning proposal

The planning proposal was lodged with Ku-ring-gai Council on 6 March 2018. On 22 May 2018, Ku-ring-gai Council resolved not to support the planning proposal.

On 9 July 2018, a Rezoning review was lodged with the Department. On 7 November 2018, the Sydney North Planning Panel determined that the proposal demonstrated strategic and site-specific merit and should be submitted for Gateway determination, subject to a number of matters being addressed through a Gateway determination including:

- the concurrence of the Rural Fire Service (RFS) prior to exhibition
- that the maximum building height is reduced by utilising topography to 'cut into' the site
- any proposal be required to provide a village bus, due to the site's location
- That R3 zoning would only be acceptable if non-seniors housing is required as a buffer to the bushland to the south. If the resolution to the above, requires that no development should be adjacent to bushland then R2 zone is more appropriate and a change to height and FSR may be necessary.
- a site specific DCP be prepared and placed on exhibition with the planning proposal.

In December 2018, council resolved not accept the role of planning proposal authority (PPA) for the proposal and as the Panel was appointed as the PPA.

The proponent sought to address the matters raised by the Panel and consulted with the RFS, resulting in the re-lodgement of an updated planning proposal on 18 June 2021 to address these requirements for Gateway determination.

Following briefings of the Panel as the PPA in support of the proposal for lodgement, an updated planning proposal was submitted to the Department requesting a Gateway determination on 10 March 2022.

A detailed background of the planning proposal is provided at **Attachment B**.

1.5 State electorate and local member

The site falls within the Davidson state electorate and the Bradfield federal electorate.

At the time of the proposal's exhibition, Jonathon O'Dea was the State Member and presently Matt Cross MP is the State Member.

Jonathan O'Dea has made representations on behalf of the local community (**Attachment E6**) raising the following issues with the proposal:

- built form, density and local character;
- traffic;
- lack of strategic merit; and,
- bushfire risk.

The Department has also received correspondence from the following members of State and Federal Parliament on behalf of the community:

- Hon Paul Fletcher MP – Federal Member for Bradfield
- Matt Cross MP – State Member for Davidson
- Sue Higginson MLC – Member of the Greens Party

During finalisation, a further representation was received from Tim James MP – Member for Willoughby on behalf of his constituent raising concerns about the proposed redevelopment of Lourdes Retirement Village and impact on residents of the village.

The matters raised in the submission relate to concerns from a resident of the Retirement Village to ensure that due process is followed, with the Panel's decision not to support the proposal in December 2023. Concerns were raised that further amendments were being sought to be made to the proposal following the Panel decision. Additionally, the submission also raises concerns about timeframes involved in progressing the redevelopment and use of the current serviced apartments until the redevelopment is confirmed.

2 Gateway determination and alterations

The Gateway determination issued on 10 May 2022 **(Attachment D)** determined that the proposal should proceed subject to conditions.

On 16 June 2022, the proponent submitted an updated proposal to the Department, addressing the conditions of the Gateway determination.

On 27 July 2022, the Panel determined the updated planning proposal suitable to proceed to exhibition (**Attachment D**).

An updated planning proposal was submitted on 3 August 2022 for exhibition.

Two Gateway alterations have been issued for the proposal to allow an extension for completion of the plan:

- On 28 August 2023, an extension to the timeframe for reporting to the Panel and for completing the LEP was approved to 22 December 2023 (**Attachment D**).

  Delays in meeting the Gateway determination timeframe occurred due to a number of attempts by the proponent to address outstanding agency issues in particular relating to biodiversity concerns.
- On 4 December 2023, a second extension was granted to remove the requirement to report to the Panel as the meeting had been scheduled; and to extend the timeframe for completion of the LEP to 12 April 2024 to allow sufficient time for finalisation of the plan (**Attachment D**).

In accordance with the Gateway determination (as altered) the proposal is due to be finalised on 12 April 2024.

3 Public exhibition

In accordance with the Gateway determination, the proposal was publicly exhibited by the Department from 17 August 2022 to 27 September 2022, as required by section 29 of the *Local Government Act 1993*.

The Department's Post-Exhibition Report (**Attachment G9**) includes summaries of community submissions (**Attachment E1**), Council's submission (**Attachment E2**) and agency submissions **(Attachment E3**).

A total of 59 submissions, objections emails and petitions were received both during after the exhibition period including:

- 33 public submissions, including 3 organisations/groups
- 15 email objections, from 3 unique submitters
- 2 petitions, which included 45 signatures unique signatures each.
- 1 submission from the former local Member of Parliament, Mr Jonathan O'Dea
- 7 Government Agency submissions
- 1 Council's submission.

A total of 35 community submissions were received, comprising of 34 objections and 1 submission neither fully objecting nor supporting the planning proposal.

3.1 Submissions supporting the proposal

There were no submissions in support of the proposal. There was 1 submission that neither supported nor fully objected to the proposal.

3.2 Submissions objecting to the proposal

There were 35 submissions received from individuals and organisations including the Resident's Committee of the Lourdes Retirement Village, STEP Inc. and the Friends of Ku-ring-gai Environment.

Of the individual submissions, 34 objected to the proposal (97%) and 1 neither supported nor fully objected to the proposal (3%).

Additionally, two petitions with 45 signatures each objecting to the proposal was also submitted to the Department.

The key issues raised in submissions were:

- traffic and parking (97%)
- access to the site during emergency (80%)
- zoning, scale and density (77%)
- bushfire (65%)
- biodiversity (51%)
- noise (37%)

Other issues were raised relating to management of the retirement village, lack of provision for serviced apartments and inadequate assessment of social impacts and these are addressed in the post exhibition report (**Attachment F1**).

Table 3 provides a summary of the issues raised in submissions and the Department's Agile Planning team's response in the post-exhibition report and assessment. The Department's Planning Land Use Strategy Housing and Infrastructure (PLUSHI) division has made some comments below where necessary and a detailed assessment in Section 4 of this Report.

Table 3 Summary of Key Issues – Public Submissions

Issue raised	Proponent response	Department response in post exhibition report
Traffic and parking (97%) • The site has limited public transport within walking distance. • This will result in additional traffic congestion due to the proposed increased occupancy.	The existing bus services are considered suitable for seniors housing, which will be supplemented by additional private buses. There is potential to liaise with TfNSW to increase bus services to support growth over time. The indicative concept plan proposed to provide 398 parking spaces at the site, consisting of 255 basement parking spaces, 126 off street parking spaces for the townhouse and 17 on-street parking spaces. Site specific car parking rates are proposed to ensure adequate car parking is provided to minimise impacts on the surrounding street parking.	The post exhibition report outlined that the site is currently serviced by a public bus route and future shuttle services catering for the retirement village and RACF can be confirmed and set in accordance with the requirements of SEPP Housing as part of any future development approval stage. The supporting transport assessment concluded that, in emergency situations, there is capacity in the existing and proposed road network to support emergency egress and access to the site (**Attachment G5**) In their submission for the proposal, TfNSW have not identified any issues in terms of traffic impacts resulting from the redevelopment of the site nor the modelling used to prepare the traffic study. Although the post-exhibition report noted the issues raised by TfNSW would not prevent the progression of the proposal, PLUSHI considers a revised planning outcome for the site which further considers the Panel's recommendations relating to bushfire mitigation measures, access for safe evacuation and density distribution, may also assist to resolve traffic concerns raised.
Access (80%) Concerns about road network capacity for safe evacuation, and the accessibility of the additional access point at the cul-de-sac.	The Transport Assessment (**Attachment A5**) confirmed that internal roads within the site are expected to adequately accommodate vehicles during a bushfire evacuation scenario.	The post exhibition report noted that vehicle access points and internal road layout will be determined at the detailed design stage. Notwithstanding this, the concept plan's road network has been tested and has demonstrated that it can adequately accommodate vehicles during a potential emergency. The Panel considered that further work could be undertaken to provide for evacuation plans and site management through a development control plan for a future planning proposal. Concerns were raised by the Panel as to the operation and use of the proposed townhouses as a physical buffer and whether they may have similar accessibility issues to the aged care facility and village when needing to evacuate in the case of emergency.

Issue raised	Proponent response	Department response in post exhibition report
		PLUSHI considers the planning outcome for the site may benefit from updated bushfire mitigation measures that are more consistent with Section 9.1 Ministerial Direction – 4.3 Planning for Bushfire Protection and access for safe evacuation can be further refined, resolving concerns raised.
Bushfire (65%)– • Evacuation routes and the site's ability to support an APZ. • Inconsistency with Ministerial Direction 4.3 – Planning for Bushfire Protection.	The NSW RFS raised no objection to the proposal. The redevelopment of the site will create a safety outcome for the site that currently does not exist. The revised Bushfire Report, prepared by Blackash Bushfire Consulting and dated December 2022 (**Attachment F2**), outlined an evacuation strategy which considers residents of the townhouses and ILUs to shelter in place, making evacuation by road unnecessary, unless decided by residents. Traffic advice confirmed both internal and external road networks can accommodate increase in traffic congestion during an emergency.	The post exhibition report provided comments on this issue noting the current housing stock on the site provides limited bushfire protection. The proponent has submitted 3 bushfire reports (**Attachments A3, F2, F6**), all of which conclude that the rezoning presents no issues in relation to bushfire that can't be addressed through their Bushfire Engineering Design Compliance Strategy (**Attachment A4**) or through the detailed design phase. The NSW RFS has stated that the proposal's performance-based approach could satisfy the requirements of Section 9.1 Ministerial Direction – 4.3 Planning for Bushfire Protection (**Attachment E7**). The Agile Planning team have considered the Ministerial Direction 4.3 in relation to the post-exhibition status of the proposal and considered its inconsistencies justified, however noted the Department as Local Plan Making Authority (LMPA) will undertake further consideration and assessment of this matter prior to making a determination as part of the finalisation process. While PLUSHI acknowledges no objection has been raised from the NSW RFS, there are concerns with the proposed performance measures and the Proponent's justification of the proposal's inconsistency with Section 9.1 Ministerial Direction – 4.3 Planning for Bushfire Protection (see Section 4.1 below).
Zoning, scale and density (77%) – Will result in an overdevelopment of the site considering the surrounding context.	The proposal included a detailed urban design analysis that takes into account the heritage and built form character of the site and surrounds. Further post-exhibition amendments have reduced the total GFA, number of townhouses and introduced a C2	The proponent has made several changes to the proposed concept plan to address concerns raised by the community, state government agencies and Council during the exhibition period. The R3 Medium Density Residential zone in the Ku-ring-gai LEP 2015 includes several more intensive residential uses (such as multi-

Issue raised	Proponent response	Department response in post exhibition report
	Environmental Conservation zone (**Attachment G8**). The Urban Design reports were also updated to demonstrate compliance with the Apartment Design Guide (ADG) for the Seniors Housing development and further detail on building reduced levels, building measurement and ADG compliance, solar access, cross ventilation, length and depth, deep soil, communal open space, and building separation.	dwelling housing and shop top housing). Given community and council concern regarding density and built form outcomes of the site, the Post exhibition report recommended a change to the zoning configuration so that the top half of the site is maintained as R2 Low Density Residential to ensure that that any future built form is commensurate with what is currently located on site. The Agile Planning team undertook design testing of the proposed heights and building footprint and prepared alternative scenarios (while working within the proponent proposed FSR of 0.85:1). The testing established that the proposal could still achieve the same yield with reduced heights adjacent to Stanhope Road. Given the low-density character of the adjacent residential areas, the Agile Planning team recommended the maximum height of building be reduced to 9.5m in some areas to provide a more appropriate height transition from 2 up to 3 storeys along the visible interfaces of Stanhope Road. The Panel did not support the planning proposal proceeding on the basis of unresolved issues including bushfire risk and density distribution. The Panel was not satisfied that there was an appropriate balance between neighbour amenity and distribution of density. This was particularly on the western boundary of the site where a 6 storey building could adjoin existing dwelling houses. The Panel comments are discussed further in section 4.
Biodiversity (51%) **–** Lacks adequate detail in identifying the site's biodiversity and ecological values .	The proponent has revised the planning proposal package on several occasions to address issues raised by Council, the Biodiversity and Conservation Science division (BCS) of the Department's then Environmental Heritage Group (EHG) (now the the Biodiversity, Conservation and Science division of Department of Climate Change, Energy, the Environment and Water) and the community in relation to the potential impact on biodiversity. This includes incorporating a C2 Environmental	Agile Planning's post exhibition report noted that while there is a loss of some existing vegetation on site, several solutions have been presented by the proponent. BCS supported a revised approach (**Attachment F5**) to include a C2 Environmental Conservation zone. The Panel considered this revision and was concerned that the introduction of the C2 Environmental Conversation zone to protect ecology would increase bushfire risk. The conflicting site constraints were noted by the Panel who found the planning proposal did

Issue raised	Proponent response	Department response in post exhibition report
	Conservation zone reducing the number of trees to be removed from 233 to 188, location of building footprints and redesign and reduction of townhouses. Additionally, any ecological impacts would be minimal and could be offset through purchase of ecosystem credits.	not warrant support to proceed and should not be made. The Panel provided comments to assist in any subsequent proposal, suggesting that the narrow southern C2 proposed zone be removed and to create a significant APZ on the southern boundary of the site. This amendment would require further consultation with DECCW. The Panel comments are discussed further in section 4. PLUSHI notes a conflict with the proposed bushfire mitigation measures and the proposed zoning to protect ecological values that remains unresolved. (see Section 4.1 below).
Noise (37%) Will result in adverse noise issues during construction and occupation.	Construction impacts will be addressed at the development application stage including noise impacts. An acoustic assessment can be carried out at development application stage to ensure that appropriate mitigation measures are put in place.	The post exhibition report noted that as part of the development approval stage, the proponent will be required to ensure that appropriate mitigation measures are in place to address additional noise generated on site, including during the construction phase. The Panel noted issues with density distribution and balance with neighbour amenity impacts from the location of the 6 storey building on the western boundary. The Panel recommended a site specific DCP to address issues with building separation and titling, which would in turn improve amenity and privacy impacts that may also improve noise impacts through the appropriate siting of or repositioning of the proposed development. While not requested, the Proponent submitted an updated concept plan to the Department following the Panel's post-exhibition meeting in response to the Panel's concerns on density (see Section 3.5.4 below).

3.3 Submission from Council

Council was consulted in accordance with the Gateway determination. On 24 October 2022, Council provided a submission strongly objecting to the planning proposal with issues raised summarised in **Table 5**.

Table 4 Summary of Key Issues

Matters raised	Proponent response	Department response
Strategic Merit The proposal fails to demonstrate strategic and site specific merit.	The strategic merit of the proposed changes has been outlined in detail within the planning proposal. The Sydney North Planning Panel (Panel) has determined that the proposal has strategic and site-specific merit on 7 November 2018 (**Attachment C**).	The Panel previously determined that the planning proposal demonstrated strategic and site specific merit when determining the rezoning review request. The Gateway Determination confirms that the proposal is consistent with the actions and objectives of relevant local and state strategic plans. As conditioned in the Gateway determination (**Attachment D**), the proposal was updated to provide further clarification in relation to a number of these documents.
Bushfire Assessment Council has conducted three studies to assess the bushfire implications of increased standards under the planning proposal all of which do not support the proposal (see below). Council has separately met with RFS, with RFS confirming that they have neither endorsed nor expressed support for the planning proposal. *Bushfire Peer Review* – identifies inadequacies with the proposal, no full bushfire risk assessment provided, technical solution inadequate, inconsistency with Section 9.1 Ministerial Direction 4.3 – Planning for Bushfire Protection, inconsistency with previous case law. *Lourdes Retirement Village, Bush Fire Strategic Study* – inconsistent with strategic planning solutions, no opportunity for protection above the minimum requirements of the PBP 2019, not suitable for increase dwellings and populations under PBP 2019, inadequate unassisted off-site evacuation, undesirable precedent. *Bushfire Evacuation Risk Assessment* – not suitable for	RFS have been consulted as the planning proposal has progressed through the plan making process (**Attachment F4**). The RFS approved the Bushfire Engineering Design Compliance Strategy (**Attachment A4**) and raised no objection to the rezoning proceeding on that basis. The performance-based approach, accepted by the RFS, satisfies all bushfire safety requirements, and will create a bushfire safety outcome better then what currently exists and then the deemed-to-satisfy approach under PBP 2019. RFS has also deemed that the proposed performance-based approach is appropriate to satisfy the Ministerial Direction. Given the considerable and ongoing collaboration with the RFS, it was determined that a Strategic Bushfire Study was not required. As part of any future development approval stage, the development will need to comply with the Bushfire Engineering Design Compliance Strategy and requires Bush Fire Safety Authority. The finer details of the design will be developed with the NSW RFS as part of the Performance Based Design Brief	Agile Planning noted that the proposed Seniors Housing development will be located in the topmost area of the site, furthest from a potential fire threat and constructed to current bushfire safety standards. This location was chosen in consultation with RFS. While non-seniors housing is being introduced adjacent to the bushland interface, these buildings create a buffer through their design and construction measures. Notwithstanding the Agile Planning team's response, PLUSH has assessed the updated Planning Proposal and notes unresolved issues concerning bushfire protection and the justification of the proposed performance measures inconsistency with Section 9.1 Ministerial Direction – 4.3 Planning for Bushfire Protection (see Section 4.1 below).

Matters raised	Proponent response	Department response
increased population based on LEP planning mechanisms, increase residents will make evacuation difficult include those existing residents on Stanhope Road, vulnerable residents will be difficult to evacuate, increase demand on emergency services, inadequate bushfire report including explanation on refuge.	process for the a development application. An addendum bushfire report has been prepared in response to issues raised in submissions regarding bushfire risk and bushfire evacuation. (**Attachment G4**) Testing found that the road network is expected to be able to accommodate the uplift in traffic, both access and egress, in an emergency scenario and is supported by Traffic Advice (**Attachment G5**). The addendum bushfire report also outlines an evacuation strategy, which considers residents to shelter in place. Residents located in the Residential Aged Care Facility would not need to evacuate as it is not located on bushfire prone land and it is greater than 100 metres from bushfire prone land. The residents of the townhouses and Independent Living Units can be accommodated in the proposed refuge building (Clubhouse) which will be available and incorporate mechanisms to ensure safe refuge for a period of 4 hours. Accordingly, no evacuation by road would be necessary, unless decided by residents.	
Urban Design Assessment – The planning proposal documentation lacks detail and fails to provide enough information to directly understand the bulk, scale and interface impacts of the master plan underpinning the proposed increased standards. The lack of detail does not support the planning proposals conclusions that the increase in density will have negligible impacts on the amenity and safety of residents. The proposal has not provided an adequate response in consideration of how the intensification will impact	The proposal includes a detailed urban design analysis which has taken into full consideration the heritage and built form character of the site and surrounds. The proponent has provided an updated Urban Design Advice (December 2022) (since amended) in response to submissions from council and the community. The proposed building heights been located on the site to provide a transition to the surrounding areas. With the retention of onsite vegetation, seeks to minimise the	The Agile Planning team supported the proposed new C2 Environmental Conservation zone as it is consistent with BCS's request for the change (see Section 3.22 below). The Agile Planning team undertook its own design testing of the concept plan (as of November 2023). It noted that proposed FSR of 0.85:1 (excluding the C2 Environmental Conservation zone) is achievable and that the revised FSR will result in a reduced GFA compared to that exhibited. As part of this testing, the built form was reduced along the Stanhope Road interface to 2 storeys transitioning up to 3 and 4 storeys.

Matters raised	Proponent response	Department response
the site in a bushfire event, however, relies upon a bushfire event to intensify development on site. The designs contain no detail to demonstrate how the site design will address the bushfire risk. The proposed location of 3-storey townhouses at the bushland interface is not consistent with dwelling types usually located at similar interfaces. It is unclear how the location of these dwellings will protect seniors housing from flame attack as it does not prevent the higher risk of ember attack. Further, it is unclear how increasing people at the highest bushfire risk location is justified. To date, no information has been provided on how the proposal will enact a mechanism to separate the seniors and non-seniors housing on the site, to ensure development occurs in line with the concept plan. Council considered that the planning proposal has failed to demonstrate compliance with the Housing SEPP for the seniors housing component and council's development control plan (DCP) for the non-seniors housing townhouses component. The heights of the proposal will have impacts on the scenic and cultural landscape characteristics of the area and impact on the adjacent low density residential and heritage conservation areas surrounding the site	impact the new built form has on these areas. The concept plan has been reviewed against the relevant DCP and is largely consistent with the controls for multi-dwelling housing, in relation to the town houses, and the controls for residential flat buildings, in relation to seniors housing. This will be further assessed as part of the development approval stage. Extensive detail has been provided on how the design addressed bushfire risk, with further advice provided as part of this response to submissions to address questions raised by RFS. While no mechanism is proposed to expressly separate where the seniors and non-seniors housing will be located, a subdivision of the Seniors and Townhouse development would form part of any future development approval stage. An updated View Analysis concludes that the built form would largely be screened by vegetation, with potential for additional planting to provide further screening (**Attachment G6).**	This proposed building massing was shown to fit within the indicative footprint and envelopes and responded to concerns relating to character and compatibility with the surrounding development. The Agile Planning team therefore recommended that the proposal is updated to include the revised FSR of 0.85:1 and a reduced building height along Stanhope Road (see Section 3.3.2 below) prior to finalisation. The R3 Medium Density Residential zone in the Ku-ring-gai LEP 2015 includes several more intensive residential uses (such as multi-dwelling housing and shop top housing). Given concerns raised around the location, density and built form outcomes of the site, the Agile Planning team recommended that the top half of the site maintains its current R2 Low Density Residential to ensure that seniors housing is delivered on site, and in an appropriate location (see Section 3.3.2 below). The Agile Planning team agreed that the site be excluded from Clause 84 and 87 of the SEPP (Housing) to ensure no further bonuses under the SEPP apply. The Panel considered that key issues of the proposal were not resolved including bushfire risk and density distribution and raised concerns with the townhouse development as well as accessibility of the occupants. PLUSHI considers a revised planning outcome for the site which further considers the Panel's recommendations, may further resolve these issues.
Heritage Assessment – The current planning proposal doesn't adequately address the impacts the rezoning and subsequent redevelopment would	Under the planning proposal, Headfort House is proposed to be retained, restored, and enhanced. This is reflected in the draft site specific DCP.	Since the proposal was placed on exhibition, Headfort House was gazetted (20 January 2023) as an item of Local Heritage significance (item I184).

Matters raised	Proponent response	Department response
have on Headfort House, the conservation area and adjoining heritage items. Additionally, the proposals lack of details means the proposal is inconsistent with the Ministerial Direction 3.2 Heritage Conservation.	The proposed concept plan positions the larger scale development (5-6 storeys) toward the centre of the site. These buildings include modulated forms with upper-level setbacks, creating a terraced form to the south and reducing overall bulk and scale. This along with the 10m setback to three storey built form in this location will ensure a sensitive transition to the existing two storey dwelling within the conservation area. Heritage Impact Assessment (**Attachment A6**) confirmed that the proposal would have an acceptable heritage impact.	Any future development application on the site will need to address any potential impacts development may have on this item. The Agile Planning team noted that Heritage NSW raised no concern regarding the proposal or its potential impacts on nearby heritage item (see Section 3.2.3 below). PLUSHI considers issues regarding heritage are resolved.
Ecology Assessment – The ecological assessment is deficient in that it does not validate or map the extent of the onsite vegetation communities. Additionally, the assessment does not contain an impact assessment that acknowledges the threatened species of plant or animal that would be impacted by the redevelopment of the site. It is noted that the redevelopment of the site will result in the removal of 59% of on-site trees, 85 categorised as of high importance, and the potential disturbance of 37% of the remaining trees. The ecological assessment makes mention of the assessment of significance under the Threatened Species Conservation Act 1995 (TSC Act), however No assessment of significance is contained within the ecological assessment and the TSC Act has been repealed and replaced with the Biodiversity Conservation Act 2016. The canopy coverage within the site exceeds the maximum of 15% as set out in PBP 2019. Any management of vegetation in the southern portion of the site will	A Biodiversity Development Assessment Report (BDAR) has been prepared as part of the response to submission by ACS Environment (**Attachment G3**). The BDAR notes that the site has been extensively modified, however, still contains some patches of remnant tree and shrub species. Areas identified containing Sydney Turpentine Ironbark Forest communities and Swift Parrot habitat around the peripheries of the site to be zoned C2 Environmental Conservation will not be removed and will be managed for conservation purposes. On this basis it is considered that any ecological impacts associated with the proposal would be minimal and could be offset through purchasing ecosystem credits. An updated BDAR would be prepared at the development approval stage to confirm any impact and required ecosystem credits or monetary contributions. No habitat to be removed is considered suitable habitat for any threatened species as the potential habitat to be removed is largely modified and managed. On this basis it is considered that any	The proponent has revised the planning proposal package to address the concerns raised relating to the ecology on site. This included the introduction of a C2 Environmental Conservation zone to protect areas highlighted as important habitat by BCS of EHG. The Agile Planning team noted that while the proposal will result in the loss of some existing vegetation on site, the proponent has presented several solutions to retain high biodiversity value areas and offset the loss of the other vegetation. Although BCS still have unresolved issues with the BDAR submitted by the proponent, they have supported this approach. As stated above, the Panel considers the introduction of the C2 Environmental Conservation zone poses further bushfire risk to development on the site. PLUSHI notes a conflict with the proposed bushfire mitigation measures and the proposed zoning to protect ecological values that remains unresolved (see Section 4.1 below).

Matters raised	Proponent response	Department response
result in the removal of native vegetation mapped upon the NSW Biodiversity Vales map. The ecological assessment fails to consider direct and indirect impacts upon the downstream environment which supports habitats for threatened species, such as the potential hydrological changes resulting from the redevelopment of the site	ecological impacts associated with the proposal would be minimal and could be offset through purchasing ecosystem credits. An updated BDAR would be prepared at the development approval state to confirm any impact and required ecosystem credits or monetary contributions. The Bushfire Report (**Attachment G4**) confirms that that proposed landscape approach will provide a fuel reduced area between the buildings and the bush fire hazard. A performance-based approach has been proposed to manage the bushfire risk on site.	
Traffic and Transport Assessment – The location of services such as supermarkets and medical centres are outside of a 10-minute/800m walking catchment and are therefore not considered to be manageable walking distance for residents of this site. In is Council's experience there are no mechanisms to mandate private services and often they are not realised or dwindle over time. The Transport Assessment (**Attachment A5**) estimates the traffic generation for the townhouses, based on traffic generation rate for medium density residential flat building however the location factor would likely result in the townhouses generating more traffic, similar to a low-density residential dwelling. Therefore, the traffic generated on site would be more then what is included within the assessment. The existing Stanhope Road catchment has an effective total of 256 dwellings (exceeds recommended by 50 dwellings) which will increase to 330 dwellings with the proposal. The amendments	The existing bus services are considered suitable for seniors housing, which will be supplemented by additional private busses. There is potential to liaise with TfNSW to increase bus services to support growth over time. The RTA (now TfNSW) Guide to Traffic Generating Developments does not state that the rates for medium density residential flat buildings are based on sites located close to a retail/transport core. Therefore, the rates used are the most appropriate ones to use. The overall traffic generation of the site is expected to be less than 100 vehicles per hour. Furthermore, access to parking for the aged care facility and apartments has been amended to be split between two main access points. The Transport Assessment concludes that the site is expected to generate more traffic than the existing case, however these increases are minimal. The bushfire strategy for the aged care facility residents is to remain in-situ, while the strategy for independent living unit (ILU) and town house residents would be to	A revised traffic response for the amended proposal **(Attachment G5**) notes that trips generated from the site would be further reduced based on the revised concept plan. The site is currently serviced by a public bus route and future shuttle services catering for the retirement village and RACF can be identified in accordance with the requirements of SEPP (Housing) 2021 as part of any future development approval stage. Testing supporting the proposed concept plan shows that, in emergency situations, there is capacity in the existing and proposed road network to support emergency egress and access to the site. As stated above, PLUSHI considers a revised planning outcome for the site which further considers the Panel's recommendations relating to bushfire mitigation measures, access for safe evacuation and density distribution, may also assist to resolve traffic concerns raised.

Matters raised	Proponent response	Department response
sought by the proposal would increase the number of dwellings within the Lourdes Retirement Village, increased a use identified as a special fire protection purpose within an area that already exceeds the recommended number dwellings. Council is concerned that the additional increase in dwellings, occupied by residents who are highly vulnerable to the effects of bushfire, will be difficult to evacuate and would result in additional and high demand on emergency services.	evacuate to a refuge building located on the site.	

3.4 Advice from Agencies

3.4,1 NSW Environment Heritage Group

The Biodiversity and Conservation Science division (BCS) of the then NSW Environment Heritage Group (EHG) have provided 5 separate submissions on the proposal (**Attachment F5**). The overarching theme from BCS submissions were the lack of identification and protection for threatened and endangered species, populations, ecological communities, and habitats included in the proposal.

The proponent has undertaken extensive consultation with the Department including an on-site meeting on 9 September 2023 that was attended by BCS, Agile Planning and Planning, Land Use Strategy and Housing. Following this meeting, the proponent provided a revised Ecological Assessment on 6 October 2023.

On 9 November 2023, BCS provided a submission supporting the progression of the planning proposal to finalisation, subject to the following recommended revisions:

- C2 Environmental Conservation zoning is applied to Sydney Turpentine Ironbark Forest Critically Endangered Ecological Communities and Swift Parrot habitat on the site, with this land to be protected and managed for conservation.
- A vegetation management plan is prepared and implemented for the site as part of any future development application.

The proposal has since been updated to reflect the recommendations from BCS (see Section 3.3.1 below).

3.4.2 Advice from other agencies

In addition to the agency submissions above, the Department was required to consult with other agencies including the NSW Rural Fire Service, Transport for NSW, Heritage NSW and Sydney Water. The agencies listed in **Table 6** provided feedback.

Table 5 Advice from public authorities

Agency and matters raised	Proponent response	Department response
Rural Fire Service (RFS) RFS have made several submissions on the proposal. In summary, RFS have raised no objection to the progression of the planning proposal for seniors housing and the nominated residential uses.	The upper limits of the proposed R3 Medium Density Residential Zoning under the exhibited concept plan is approximately 10% above the mapped dwelling/bed count. Based on this figure, the analysis of the roadways for emergency egress and fire brigade access demonstrates the networks can adequately function and that the proposed rezoning presents no significant issue. Water supplies are considered an engineering issue and can be addressed as part of the more detailed design development and future development approvals stage	The proponent has prepared and submitted 3 bushfire reports (**Attachment A3; G4**) which concluded that the rezoning presents no issues in relation to bushfire that can't be addressed through their Bushfire Engineering Design Compliance Strategy (**Attachment A4**) or through design during development approval stage. Regarding the inclusion of C2 Environmental Conservation on site, the Agile Planning team was satisfied that it does not adversely impact the performance of the site in a bushfire scenario. Further bushfire assessment will be undertaken through the development approval process to ensure the site meets the requirements of the NSW RFS for bushfire safety. Notwithstanding comments from Agile Planning, PLUSHI notes a conflict with the proposed bushfire mitigation measures and the proposed zoning to protect ecological values that remains unresolved (see Section 4.1 below).
Transport for NSW The proposal will provide opportunities for improvements to active and public transport amenities. Traffic generated by the proposal is relatively minor in nature.	Noted.	No objection raised.
Heritage NSW There are no impacts on Aboriginal objects or places or State heritage items or historic archaeology. Further work may be required to determine the potential impact the planning proposal may have on surrounding items of heritage value.	An Aboriginal Heritage Due Diligence Assessment (AMBS Ecology and Heritage – **Attachment G2**) supporting the proposal recommends that no further Aboriginal cultural heritage assessment is required and further work can be done at any future development to identify and protect any heritage items. The planning proposal is accompanied by a Heritage Impact	As stated above, any future development application on the site will need to address any potential impacts development may have on Headfort House Chapel (item I184). As stated above, PLUSHI considers issues regarding heritage are resolved.

Agency and matters raised	Proponent response	Department response
	Statement (**Attachment A6**) which concludes that the proposal will not impact on the adjacent heritage conservation areas and will mitigate any potential impacts through design and landscaping strategies.	
Sydney Water Potable water and wastewater system should have adequate capacity to service the proposed development.	Noted.	Matters raised can be addressed during detailed design stage.

3.5 Post-exhibition changes in response to submissions

3.5.1 Proponent changes

In response to agency and community submissions, the proponent submitted a revised Urban Design Report (**Attachment G8**) and Bushfire Report (**Attachment G4**) on 20 November 2023.

As a result of the revised information, proposed changes to the proposal were outlined as follows:

- Rezone the site from R2 Low Density Residential to part R3 Medium Density Residential and part C2 Environmental Conservation;
- Increase the maximum height of buildings from 9.5m to a range of heights including 9.5m, 11.5m, 14.5m, 16m, 20.5m and 22m;
- Increase the maximum floor space ratio (FSR) from 0.3:1 to 0.85:1; and,
- Introduce a site-specific clause so the bonus FSR provisions for seniors housing in the SEPP (Housing) 2021 do not apply to the site.

The revised proposal results in a reduced development area from 59,906sqm to 45,470sqm and a reduced total GFA from 39,679sqm to 38,650sqm.

The proposed changes would specifically:

- include a part C2 Environmental Conservation zone to protect areas identified in the BDAR;
- remove development standards within the proposed C2 Environmental Conservation zone;
- increase the proposed FSR from 0.75:1 to 0.85:1 on the residential zoned land.
- revise the concept scheme to remove 4 of the non-seniors townhouses reducing the number of townhouses to 59.

On 27 November 2023, the RFS provided comments supporting the planning proposal (**Attachment F4**).

3.5.2 Department proposed post exhibition changes

The Department's Agile Planning team supported the proponent's revised FSR of 0.85:1, noting that urban design testing confirms despite the developable area decreasing due to the introduction of a C2 Environmental Conservation it can be achieved on the site.

To address issues raised by the community and Council regarding the bulk and scale of the proposal, Agile Planning recommended the following post-exhibition changes in addition to the proponent's above changes:

- Amend the proposed Land Zoning map to retain the R2 Low Density Residential zone for the proposed seniors development; and,
- Amend the Height of Buildings map to extend the 9.5m height across the Residential Aged Care Facility and Independent Living Units fronting Stanhope Road (reduced from what was exhibited)

Agile Planning notes that retaining the R2 Low Density Residential zone will restrict more intense land use types and ensure delivery of the seniors development. This was intended to give certainty to the community and Council that seniors development will be delivered and ensures that any future built form is commensurate with what is currently located on and around the site.

The revised proposal was forwarded to the Panel for post-exhibition and finalisation consideration on 5 December 2023 with the post-exhibition report (**Attachment G9**).

3.5.3 Sydney North Planning Panel recommendation

On 15 December 2023, the Panel considered the Department's post-exhibition report (**Attachment G9**) and met with the Department, the proponent, Council and members of the community.

As the Planning Proposal Authority, the Panel determined to not proceed with the planning proposal and to request the Minister's delegate to determine that the matter not proceed (**Attachment H**).

While the Department's post-exhibition report recommended the revised proposal should be made with further post-exhibition amendments (see Section 3.3.2 above), the Panel found that the proposal did not warrant support to proceed and should not be made (see Section 4.1 below).

Notwithstanding its decision, the Panel acknowledged that the facility was a desired use and in need of upgrading and offered the following changes that could significantly improve a planning outcome for the site (see Section 4.2 below).

The Panel determined that a Gateway determination alteration request be submitted to the Department as the Local Plan Making Authority requesting the planning proposal no longer proceed.

3.5.4 Proponent response to Panel post-exhibition meeting determination

On 18 January 2024, the proponent submitted a response (**Attachment I**) to the Department to address the Panel's recommendations including offerings to improve the planning outcome for the site.

The response included a revised scheme (**Figure 19**) proposing 22 single dwelling houses instead of 59 townhouses and increasing the number of independent living units from 141 to 165. No change is proposed to 110 beds in residential aged care facility.

Figure 7 Illustrative Master Plan – revised by proponent following Panel post-exhibition meeting (source: Plus Architecture)

The Department acknowledges the work the proponent has undertaken to address the Panel's concerns. The Department notes the proposed amendments to the masterplan since Gateway substantially change the planning proposal and consider further assessment and consultation with the public and agencies is necessary. It is recommended that this occurs as part of a scoping exercise for a revised planning proposal.

4 Department's finalisation assessment

The exhibited proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment D**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

The revised proposal remains consistent with:

- regional and district plans relating to the site;
- Council's Local Strategic Planning Statement;
- relevant SEPPs currently in force.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage.

Table 6 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	☒ Yes	☐ No, refer to section 4.1
District Plan	☒ Yes	☐ No, refer to section 4.1
Local Strategic Planning Statement	☒ Yes	☐ No, refer to section 4.1
Local Housing Strategy	☒ Yes	☐ No, refer to section 4.1
Section 9.1 Ministerial Directions	☐ Yes	☒ No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	☒ Yes	☐ No, refer to section 4.1

Table 7 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	☒ Yes	☐ No, refer to section 4.1
Environmental impacts	☒ Yes	☐ No, refer to section 4.1
Infrastructure	☒ Yes	☐ No, refer to section 4.1

4.1 Detailed review of Panel decision

The following section provides details of the Department's assessment of key issues raised by the Panel in their determination to not proceed with the LEP, and recommended revisions to the planning proposal that may result in a better planning outcome for the site.

4.1.1 Bushfire

Primary reasons for the Panel's decision to not support the proposal relate to bushfire:

- The community submissions consistently raised bushfire risks and density distribution of seniors housing and townhouses across the site, which remain unresolved and the Panel was not convinced that the solution for fire risk provided by the proponent was appropriate for a Special Fire Protection Facility (SFPF).
- The Panel was also unconvinced that the erection, and sale, of townhouses to the general population, as a physical buffer to the SFPF within the asset protection zone of the aged care facility is desirable in fact and operation, where the end purchasers of the townhouses may have similar dependencies and accessibility issues as the aged care component of the site.
- There was uncertainty as to whether the mitigation of bushfire risks is at an acceptable level given the SFPF, the 'human' reaction to fire and the likely age and fragility of residents.
- It was unclear to the Panel whether the proposed Bushfire Engineering and Design Strategy, for a Special Fire Protection Purpose (SFPP) facility would be successful or appropriate for a SFPF as opposed to an APZ solution.
- There was concern that the introduction of the C2 Environmental Conservation zone to protect ecology would increase bushfire risk. The site thus having inbuilt conflict constraints.

The Department notes that the Planning Proposal has undergone a number of changes since being first considered by the Panel, as detailed in Section 3.3 and **Table 2** above, with these changes being supported by the NSW RFS. While the Department's Agile Team noted community concerns regarding bushfire were adequately addressed by the proponent in the revised proposal, the Panel as an independent body, is unconvinced that the revised proposal adequately addresses these concerns.

As detailed above, the introduction of the C2 Environmental Conservation zone was recommended by BCS of EHG to address biodiversity concerns. While considered sufficient to mitigate biodiversity concerns raised by BCS, PLUSHI acknowledges the Panel's concern for the potential for further risk from bushfire impacts on the proposal. Furthermore, PLUSHI notes proposed mitigation measures including the erection of townhouses to act as a physical buffer to the seniors housing have become a contentious issue, raised by multiple local community, Council and agency submissions.

The Panel considered that bushfire risks were unresolved and was not convinced that the solution for the risk provided by the proponent was appropriate for a Special Fire Protection Purpose. The Panel were also concerned with the proposed townhouses as a physical buffer to the SFPP, and as to whether they would serve the purpose given the occupants of the townhouses may have similar dependencies and accessibility issues. It was unclear to the Panel as to whether the Design Strategy would be successful or appropriate for a SFPP as opposed to a APZ solution.

PLUSHI supports the Panel's response that the bushfire risk remains unresolved and that the proposal should not proceed in its current form until these issues are resolved (see Section 4.1.4 below).

4.1.2 Density

The Panel was not satisfied that there was an appropriate balance between neighbour amenity and distribution of density, particularly on the western boundary where a 6-storey building would abut existing dwelling house building forms.

The Department notes the increase in height for the building on the western boundary is a post-exhibition change following adoption of the C2 Environmental Conservation zone. Massing and density on the site can be further refined to address the Panel's concerns however this would benefit through a new planning proposal (see Section 4.1.4 below).

The Proponent's updated concept scheme submitted to the Department following the Panel's post-exhibition meeting largely sought to address the Panel's concerns raised regarding density on the site through a reduction in building height near existing dwelling houses, however resulted in a substantially different scheme that should be subject to further assessment and consultation through the planning proposal process.

4.1.3 Panel Consideration for future proposal

Notwithstanding its decision, the Panel acknowledged that the facility was a desired use and in need of upgrading and offered the following changes that could significantly improve a planning outcome for the site:

- Remove the narrow southern C2 Environmental Conservation zoning and create a significant Asset Protection Zone (APZ) on the southern boundary within the site;
- Change the area nominated for townhouses to be dwelling houses allowing their rear gardens to act as an APZ. The zoning of this part of the site of the whole site to be resolved either by local provision or rezoning;
- Re-position the density and height to achieve a better height transition to western neighbours whilst potentially increasing height to the north. Heights to be nominated and perhaps a split FSR; and,
- Require a site-specific development control plan LEP clause which addresses arrangements for future subdivision, titling, building separation, bushfire construction methodology, evacuation plans and site management

PLUSHI agrees with the Panel's offered changes that could improve the planning outcome for the site and notes that the Proponent's response following the Panel's post-exhibition decision has attempted to incorporate these offered recommendations. Notwithstanding this, the Department is of the position that a new planning proposal would be more beneficial in order to further address risks and reduce the number of conflicting recommendations from Council and agencies (see Section 4.1.4 below)

4.1.4 Department position

First submitted to Council in 2018, the Planning Proposal has been subject to detailed review and assessment, including a rezoning review by the Sydney North Planning Panel (**Attachment C**) and various subsequent reviews addressing conditions imposed by the Panel.

As detailed above in Section 3.3, the Planning Proposal has undergone a number of post-exhibition changes to address concerns raised by the community, agencies and Council's. This includes amendments to the zoning, building height, floor space ratio and biodiversity maps. While re-exhibition of the planning proposal has not been required, the proposal is substantially different to that supported conditionally by the Panel at rezoning review.

PLUSHI considers the alterations made to the Planning Proposal have made it substantially different to what was exhibited. The number of concerns raised and subsequent revisions demonstrates that the proposal should be further refined as conflicting recommendations have arisen including the introduction of the C2 Environmental Conservation zone as requested by BCS.

As the PPA, the Panel found that the proposal did not warrant support to proceed and requested the Minister's delegate of the Department to determine that the matter not proceed through an alteration to the Gateway determination. The Department notes the Panel's reasons and recommends a Gateway alteration to not proceed with the proposal.

The Department considers the matter on bushfire risk remains unresolved. This includes adequate justification of the proposed bushfire mitigation measures inconsistency with the Section 9.1 Ministerial Direction – 4.3 Planning for Bushfire Protection, namely compliance with the required APZ for a special fire protection purpose (SFPP). The compliance with or a performance based

solution to the APZ must have regard to any C2 Environmental Conservation zone should such a zone be proposed in future.

The Department notes that if a State Significant Development (SSD) Application is lodged for the site, it may not need to obtain a Bushfire Safety Authority (BFSA) under the Rural Fires Act 1997 for a special fire protection purpose development. As such, it is recommended that the NSW RFS are made aware of this and have the opportunity to further assess and comment on any future Planning Proposal for the site, specifically on any proposed bushfire mitigation measures. Further consultation should be undertaken with the NSW RFS during the planning stage of a new proposal in accordance with Attachment A of the Local Plan Making Guideline, prior to being submitted to Council.

While important to protect threatened flora and fauna through the adoption of a C2 Environmental Conservation zone, the Department acknowledges the existing facility on the site was constructed prior to statutory bushfire protection legislation that is required to be considered during the planning proposal stage. As acknowledged by expert reports, the existing facility does not meet standards on bushfire protection. The Department acknowledges the existing facility is nearing or is in need of upgrading. Such upgrades would assist in its performance during a bushfire and the protection of occupants within the seniors housing facility.

The Department notes that the application of a conservation zoning should be balanced with the importance of protecting lives and in the context of economically viable redevelopment of the site which could include biodiversity credit offsets and clearing to create an APZ.

Further to the Panel's offered recommendations, the Department adds:

- The degree of post-exhibition amendments demonstrates that the proposal should be further refined to address risks including, but not limited to, those regarding bushfire and biodiversity;
- The NSW RFS should be made aware of the potential limitation to assess a future development application for the site and be given the opportunity to further assess and comment on bushfire mitigation measures during early stages of drafting a new planning proposal in accordance with Attachment A of the Local Plan Making Guideline;
- The planning outcome for the site would benefit through a revised proposal that addresses concerns raised by the community, Council and agencies;
- Conflict between Council, proponent and agency recommendations that are adopted in a new planning proposal should be reduced; and,
- The proponent and Council should collaborate more during pre-planning proposal consultation stages in order to resolve issues to improve the current facility on the site.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 8 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	No maps have been prepared for the proposal.	☐ Yes ☒ No, see below for details
Sydney North Planning Panel	The Department provided a letter to the Panel advising of the Gateway alteration to not proceed with the proposal.	☒ Yes ☐ No, see below for details
Proponent	The Department provided a letter to the proponent advising of the Gateway alteration to not proceed with the proposal.	☒ Yes ☐ No, see below for details
Council	The Department provided a letter to Council advising of the Gateway alteration to not proceed with the proposal.	☒ Yes ☐ No, see below for details
Parliamentary Counsel Opinion	Parliamentary Counsel has not been consulted on the drafting of an LEP.	☐ Yes ☒ No, see below for details

No maps have been prepared by the Department's ePlanning team, and Parliamentary Counsel has not been notified, as this proposal is not supported to proceed for an LEP amendment to be made.

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine not to make the draft LEP under clause 3.36(2)(b) of the *Environmental Planning and Assessment Act 1979* because:

- The Sydney North Planning Panel as the PPA found that the proposal did not warrant support to proceed and determined that the LEP should not be made;
- Key issues with the proposal, as raised in community, Council and agency submissions, remain unresolved;
- The issue of bushfire issue remains unresolved and the Panel as the PPA was not convinced that the solution for fire risk provided by the proponent was appropriate for a Special Fire Protection Facility (SFPF);
- The degree of post-exhibition amendments demonstrates that the proposal should be further refined to address risks including, but not limited to, those regarding bushfire and biodiversity;
- The planning outcome for the site would benefit through a revised proposal that addresses concerns raised by the community, Council and agencies;
- Any revised planning proposal would require re-exhibition due to the extent of changes envisaged and to allow for public consultation to be undertaken in accordance with the Act;
- While the proposal gives effect to planning priorities and demonstrates strategic merit through delivery of housing, it does not demonstrate site specific merit relating to the impacts on biodiversity, bushfire risk and density distribution;
- Although the Department worked closely with the proponent and agencies, including RFS and the Biodiversity, Conservation and Science (BCS) division of Department of Climate Change, Energy, the Environment and Water (DCCEEW) to make extensive amendments and resolve the issues raised, the recommended updates did not satisfy the Panel that the risks had been fully addressed to allow it to proceed to finalisation;
- Conflict between Council and agency recommendations that are adopted in a new planning proposal should be reduced including a balance between conservation and protecting the lives of occupants from hazards and risks;
- The proponent and Council should collaborate more in order to resolve issues to improve the current facility on the site; and
- Any new planning proposal should be discussed with Ku-ring-gai Council and the proposal should address the recommendations of the post exhibition report as well as the Panel's recommendations to the proponent as to how planning for the site can achieve a better outcome.

19.06.2024

Brendan Metcalfe

Director, Metro Central and North District

9.06.2024

Charlene Nelson

Manager, Place and Infrastructure Metro Central and North

Assessment officer

Kristian Jebbink

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7 Attachments

Attachment	Document
A1	Planning Proposal – 3 August 2022
A2	Urban Design Report – 2 August 2022
A3	Bushfire Report – 14 June 2022
A4	Bushfire Engineering Design Compliance Strategy
A5	Transport Assessment – 2 June 2022
A6	Heritage Impact Assessment – 16 June 2021
A7	Social Effects Study – 10 June 2021
B	Planning history of proposal
C	Sydney North Planning Panel Rezoning Review Record of Decision – 7 November 2018
D	Gateway determination and alterations
E	Sydney North Planning Panel Exhibition Record of Decision – 27 July 2022
F1	Community submissions summary – 5 December 2023
F2	Council submission summary – 5 December 2023
F3	Agency submission summary – 5 December 2023
F4	NSW Rural Fire Service submissions (combined)
F5	Environmental Heritage Group submissions (combined)
F6	Local member submission
G1	Proponent response to submissions – 23 December 2022
G2	Aboriginal Heritage Due Diligence Assessment – 16 December 2022
G3	Biodiversity Development Assessment Report – 30 November 2022
G4	Addendums to bushfire report – December 2022 – October 2023
G5	Revised traffic response – 19 December 2022
G6	Updated view analysis – 21 November 2022
G8	Final Urban Design Report – 20 November 2023

Attachment	Document
G9	Post-exhibition report – 5 December 2023
H	Sydney North Planning Panel post-exhibition meeting – 20 December 2023
I	Proponent amendment to master plan - January 2024