

JRPP No.	2015SYE018
DA No.	276/2013
PROPOSED DEVELOPMENT	Section 96 application to modify approved demolition of existing buildings and construction of a seniors living housing development
APPLICANT:	Trustees of Roman Catholic Church
REPORT AUTHOR	Ben Latta, Senior Planner, Kogarah City Council

Assessment Report and Recommendation

Date: 02/09/2014

Development Application No.: 276/2013

Address: 143 - 155 Princes Highway and 38-48 Chapel Street,
KOGARAH

Applicant: **Trustees of Roman Catholic Church**

Owner: Roman Catholic Church

Proposal: **Section 96 application to modify condition 37 of Development Consent for the approved demolition of existing buildings, construction of a seniors living housing development**

Estimated Cost of Construction: \$68,116,455.00

Officer's Recommendation:

Section 96 Approval

- A. That Council, as the consent authority, pursuant to Section 96 (2) of the Environmental Planning and Assessment Act, 1979, grant approval to the requested modifications to Development Consent 276/2013 dated 13 March 2014 for the demolition of existing buildings, construction of a seniors living housing development consisting of three (3) buildings (6-12 storeys) containing 137 independent and assisted living units and a residential care facility with 80 beds, basement carpark and subdivision at 143 - 155 Princes Highway and 38-48 Chapel Street KOGARAH submitted on 18 December 2014 subject to the development consent being modified as follows:

That conditions 1 and 5 be modified as follows:

(1) Approved Plans of Consent

The development must be implemented in accordance with the approved plans, specifications and details listed below and any supporting information submitted with

the Development Application except as amended by any conditions attached to the Development Consent:

- (i) Architectural plans – prepared by Grengate Design Pty Ltd, Project No.00-18, Drawing Nos. DA 11, issue 1 dated 28/11/2013; DA 11, DA 101, DA 102, DA 103, DA 104, DA 105, DA 106, DA 107, DA 108, DA 109, DA 110, DA 111, DA 112, DA 113, DA 201, DA 202, DA 203, DA 204, DA205, DA 206, DA 210; Rev.10 dated 19/12/2014.
- (ii) Landscape plans – prepared by Melissa Wilson Landscape Architects, Project No.1328, Sheets 1, 3 and 4 Issue C dated 8/12/14; Sheet 2 Issue F dated 10/12/2014, Sheet 5 Issue C dated 8/12/14.
- (iii) Stormwater Strategy and Plans – prepared by Warren Smith & Partners Pty Ltd; Report Issue B, dated 5 November 2013, Plans – Job No.4588000, Drawing Nos.C-01 – C-09, Issue B, dated 05/11/2013.
- (iv) Subdivision plans - Prepared by Mark John Andrew, Ref. No. 131007, Issue 1 dated 18/11/2013

(5) Section 94 Contributions

As at the date of Development Consent the following contributions have been levied on the subject development under Section 94 of the Environmental Planning and Assessment Act, 1979 and the nominated Section 94 Contributions Plans:

No.8 – Kogarah Town Centre – Streetscape, Open Space & Public Domain	\$1,180,184.01
No.8 – Kogarah Town Centre – Traffic Facilities	\$22,567.80
No.8 – Kogarah Town Centre – Community Facilities	\$21,038.82
No.9 – Kogarah Libraries – Buildings	\$19,469.04
No.9 – Kogarah Libraries – Books	\$13,881.66
TOTAL	\$1,257,141.33

Report Summary

Proposal

The approved development involves the construction of an integrated aged care village that incorporates both independent assisted living units and a residential care facility.

The Section 96 Application proposes the following modifications

- Reduce the size of Building 2 (facing Princes Highway) to three (3) levels. The gross floor area has been reduced from 16,742m² to 15,700m².
- The number of independent living apartments has been reduced from 137 to 105 with a change in the mix of units.

- Increase the size of the Residential Aged Care Facility in Building 1 from 66 to 92 rooms or increasing from 80 to 100 beds. The increase in RACF beds absorbs a deletion of 17 apartments in Building 1.
- Reduction in basement parking spaces 153 to 138 spaces.
- Minor alterations and addition to the built form of all 3 buildings to improve the amenity of apartments.
- Introduction of deep soil landscaping areas to the School/Parish carpark, allowing for 2 x canopy trees.
- A new colonnade path along the western perimeter of the courtyard.

Site and Locality

The subject site is an irregular shaped parcel of land located at the southern end of St Patrick's School and Church. It consists of eight (8) allotments having a total site area of 13096 square metres, with the site of the proposed seniors living development (excluding the church and school) having an area of 5404 square metres post-subdivision. The site has street frontages to Chapel St, Princes Lane and Princes Highway. The land falls gently towards the Princes Highway and a number of trees and disused building exist on the site.

The site is located at the southern edge of the Kogarah Town Centre and is within the St George Hospital Precinct. To the north and west of the site are St Patrick's School and Church, St George Public Hospital and St George Private Hospital. To the south are 3 – 5 storey residential flat buildings and to the east on the opposite side of the Princes Highway is Moorefield Girls High School.

Zoning and KLEP 2012 Compliance

The land is zoned SP 2 – Infrastructure – Educational Establishment and 'seniors housing' is a prohibited form of development.

The proposal is a permitted form of development under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, subject to a Site Compatibility Certificate being issued by the Minister. A Site Compatibility Certificate has been issued by the Minister, thereby making the proposal a permissible form of development with consent.

Kogarah Development Control Plan 2013 (KDCP 2013)

The proposed development satisfies the relevant provisions of Part E – Kogarah Town Centre in KDCP 2013. The proposed modification does not affect compliance with any provisions of KDCP 2013.

Submissions

The application was placed on neighbour notification for a period of fourteen (14) days.

During this period Council received two (2) submissions from different departments of NSW Health, raising issues with traffic, parking and disruption.

Conclusion

Having regard to the Heads of Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment of the proposal Development Application No. 276/2013 should be approved subject to conditions.

Report in Full

Proposal

The approved development involves the construction of an integrated aged care village that incorporates both independent assisted living units and a residential care facility.

The Section 96 Application proposes the following modifications

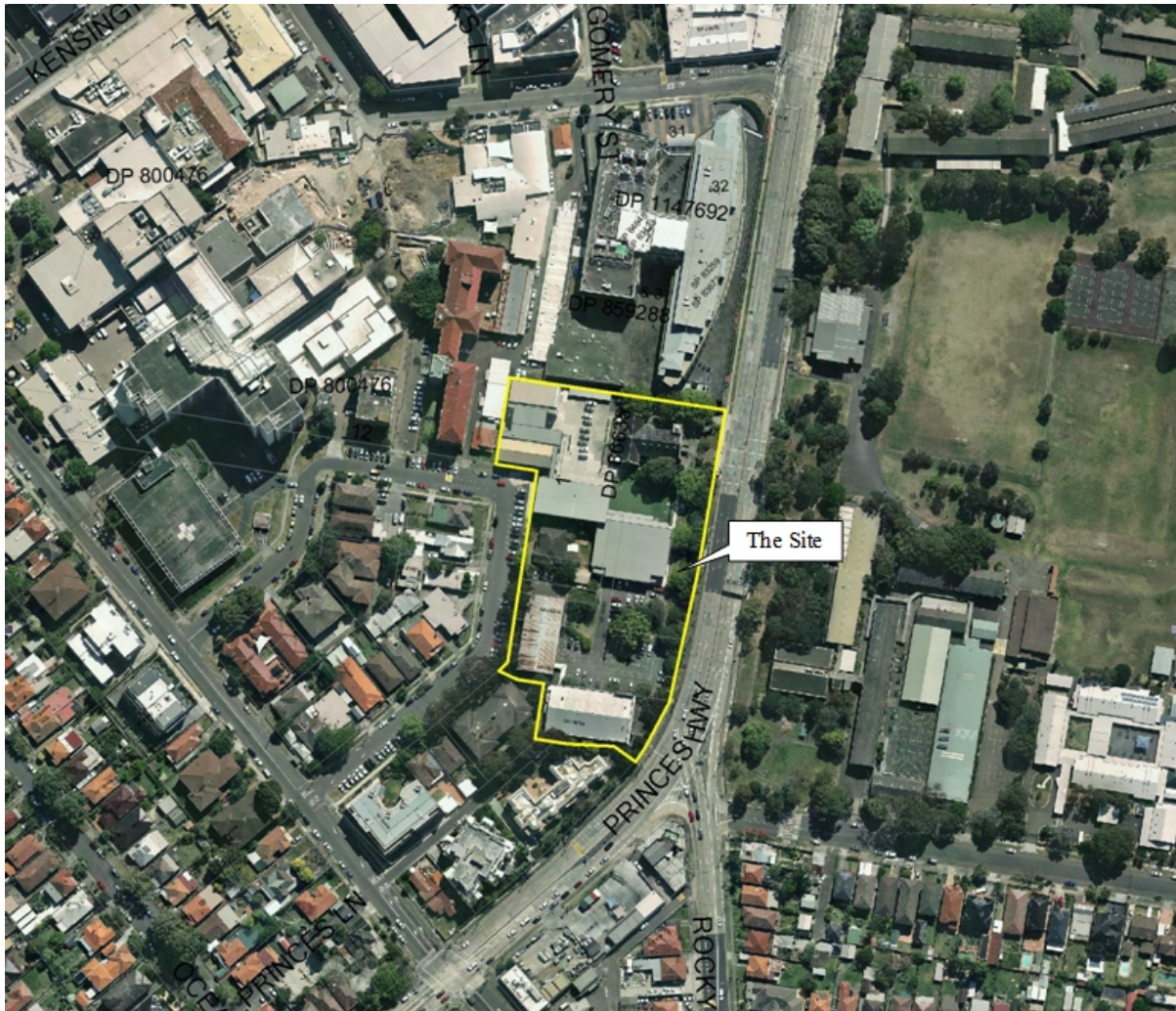
- Reduce the size of Building 2 (facing Princes Highway) to three (3) levels. The gross floor area has been reduced from 16,742m² to 15,700m².
- The number of independent living apartments has been reduced from 137 to 105 with a change in the mix of units
- Minor alterations and addition to the built form of all 3 buildings to improve the amenity of apartments.
- Increase the size of the Residential Aged Care Facility in Building 1 from 66 to 92 rooms or increasing from 80 to 100 beds. The increase in RACF beds absorbs a deletion of 17 apartments in Building 1.
- Reduction in basement parking from 153 to 138 spaces.
- Introduction of deep soil landscaping areas to the School/Parish carpark, allowing for 2 x canopy trees.
- A new colonnade path along the perimeter of the courtyard.

Site and Locality

The site is located at the southern end of Kogarah Town Centre and comprises an irregular shaped parcel of land located at the southern end of St Patrick's School and Church. It consists of eight (8) allotments having a total site area of 13,096 square metres, with the site of the proposed seniors living development (excluding the church and school) having an area of 5,404 square metres, post subdivision. The site has street frontages to Chapel St, Princes Lane and Princes Highway. The land falls gently towards the Princes Highway and a number of trees and disused building exist on the site.

The site is the former Bethany College and currently accommodates a number of disused brick buildings. Part of the site subject to the proposed car parking and driveway works is the currently operating St Patrick's Church Presbytery and St Patrick's Catholic Primary School.

The site is located at the southern edge of the Kogarah Town Centre and is within the St George Hospital Precinct. To the north and west of the site are St Patrick's School and Church, St George Public Hospital and St George Private Hospital. To the south are 3 – 5 storey residential flat buildings and to the east on the opposite side of the Princes Highway is Moorefield Girls High School.



Background

On 13 March 2014 Council granted consent to Development Application No.276/13, subject of the proposed modifications.

On 25 August 2014 a Section 96 application was lodged with Council, seeking deletion of conditions 4 and 5 relating to the levy of Section 94 contributions. The application has not yet been determined.

On 7 November 2014 Council granted consent to a Section 96 application to modify condition 37, relating to the use of Princes Lane for construction access.

On 18 December 2014 the Section 96 application subject of this report was lodged with Council.

The plans and supplementary information lodged with the Section 96 application on 18/12/14 are relied upon for assessment in this report.

Section 96 Considerations

The application has been made pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No: 276/2013 dated 13 March 2014 and involves the following modifications to the approved development:

- a) *Reduce the size of Building 2 (facing Princes Highway) to three (3) levels and changes to walls*

Comment

Proposed Building 2 facing Princes Highway has been reduced to three (3) residential levels, with two (2) levels being deleted. The proposed modifications also involve minor increases and decreases in floor area by moving some walls or deletion of units in the lower ground floor area. The connection between buildings 2 and 3 has been severed to create a view corridor to the east.

The gross floor area (GFA) of the approved development is 16,742m² (3.09:1 FSR) and the proposed reduction yields a GFA of 15,700m² (2.9:1 FSR), or a reduction of 1042m². The proposed scale and form of the development as a whole is minimally altered with the largest change presenting to Princes Highway.

The proposed modification results in a lower building presentation to Princes Highway making views to Botany Bay available to more apartments in the approved 12 storey building.

The proposed height of building 2 adopts a similar plane to the existing school hall building and St Patricks Church.

The deletion of two storeys does not result in any detrimental impacts to adjoining properties or other units within the development and is supported.

The proposed modifications are acceptable and result in substantially the same development as that approved.

- b) *Alter mix and size of residential care facility and number of independent living units*

Comment

The proposed modifications involve increasing the size of the Residential Care Facility in Building 1 to comprise four (4) levels (Levels 1-5), increasing from 80 to 100 beds.

The proposed modifications reduce the number of independent living units (ILU) from 137 to 105, as follows:

- Reduction of the number of ILUs with the deletion of 17 apartments in Building 1 (11 units on level 5 are replaced by aged care accommodation as mentioned above),
- Deletion of 8 apartments in Building 2 (deletion of two levels) and
- Deletion of 9 apartments in Building 3 (deleting floor area to separate from building 2) to create the view corridor and removal of the lower ground south facing apartments.

The apartment mix as approved and modified is tabulated below:

<i>Units</i>	<i>Approved DA</i>	<i>Proposed S.96</i>
Studio	14	9
1 Bed	20	4
1 Bed with utility	26	20
2 Bed	26	27
2 Bed with 2nd Toilet	36	-
2 Bed with 2 bathrooms & utility room	8	27

The proposed mix of apartments has been maintained to an acceptable level to provide housing choice for prospective residents.

The layouts, sizes and design of apartments maintain the same level or improved level of amenity to that approved.

c) Reduced number of basement parking spaces

Comment

The approved basement carpark has been reduced in size along the northern and western perimeter of the car park by approximately 5m and replacement of the lower ground floor units on the southern side with parking.

The number of parking spaces has been reduced from 153 to 138. The number of ILUs has been reduced from 137 to 105.

The approved development required fifty-seven (57) spaces to be provided.

Under the Seniors Living SEPP, the proposed development is required to provide parking at the following rates:

For self-contained dwellings:

- (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.

For a residential care facility:

- One (1) space per 10 beds (10 spaces)
- 0.5 space per employee (25spaces)
- One (1) ambulance space per development

The reduced parking requirement for the ILUs is offset by the increase need for parking for the residential care facility. Based on the provision of 40 staff for four levels in the approved development, the additional level of the care facility will need an additional five (5) spaces

for ten (10) additional staff (on a pro rata increase) and an additional two spaces for twenty (20) additional beds.

Based on the above rates of provisions in the SEPP, the development requires a total of fifty-seven (57) spaces broken down as follows:

- Twenty-one (21) spaces for self-contained units (1 per 5 units)
- Ten (10) spaces for residents in the residential care facility
- Twenty (25) staff spaces in the residential care facility
- One (1) ambulance space

The proposed provision of 138 spaces (including the ambulance space), more than meets required parking.

d) Deep soil landscaping areas to the School/Parish carpark, allowing for canopy trees

Comment

The proposed modifications make use of the reduced basement footprint to allow for new canopy trees between parking spaces in the School/Parish carpark.

The proposed modifications are minor in nature and result in improved amenity, aesthetics and micro-climate for the carpark.

e) New colonnade path along the eastern and southern perimeter of the courtyard

Comment

The proposed modifications to the ground floor of buildings 2 and 3 include the introduction of colonnade pathways around the eastern and southern perimeter of the central courtyard.

The proposed modifications provide a better pedestrian environment around the central courtyard with weather protection from the roof over.

The proposed modification is minor in nature and only visible from within the development.

Section 96(2) of the Environmental Planning and Assessment Act 1979 enables consent the authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

- 1. Is satisfied the proposed development as modified is substantially the same development for which consent was originally granted?**

Comment

The proposed development as modified would represent substantially the same development for which consent was originally granted.

- 2. Has consulted with the relevant Minister, public authority or approval body with respect to a condition imposed on the consent or general terms of approval.**

Comment

Not Applicable

3. Has advertised and or notified the application in accordance with the regulations or a development control plan?

Comment

The application was neighbour notified in accordance with the provisions of Section A2 – Public Notification of KDCP 2013.

5. Has considered any submissions made concerning the proposed modification.

Comment

During this period Council two (2) submissions, which are discussed later in this report.

Section 79C Assessment

The following is an assessment of the application with regard to Section 79C (1) of the Environmental Planning and Assessment Act 1979.

(1) Matters for consideration – general

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provision of:**
(i) any environmental planning instrument,

On the 8 February 2013 Kogarah Local Environmental Plan 2012 (KLEP 2012) commenced.

However, the savings provisions contained within clause 1.8A only relate to Development Applications lodged and undetermined prior to the commencement of KLEP 2012. Accordingly, any application to modify development consent is subject to the provisions of KLEP 2012.

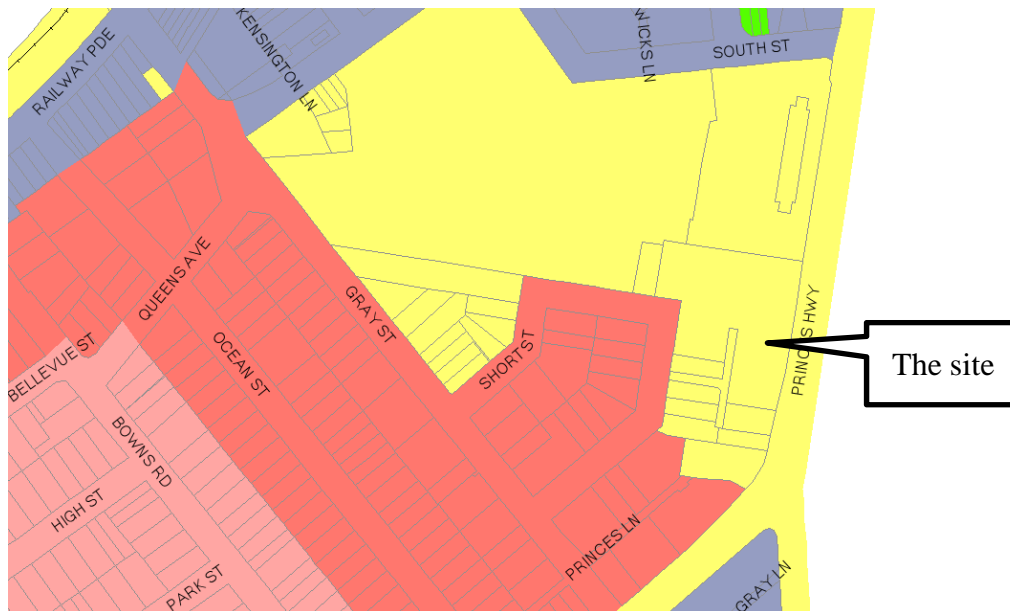
Kogarah Local Environmental Plan 2012 (KLEP 2012)

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

The land is zoned SP 2 – Infrastructure – Educational Establishment and ‘seniors housing’ is a prohibited form of development.

The proposal is a permitted form of development under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, subject to a Site Compatibility Certificate being issued by the Minister. A Site Compatibility Certificate has been issued by the Minister, thereby making the proposal a permissible form of development with consent. The proposed modifications are generally consistent with the development issued a site compatibility certificate by the Minister.



State Environmental Planning Policy (Infrastructure) 2007

The site adjoins a classified road, Princes Highway, and is therefore subject to the provisions of Clauses 101 and 102 in the Infrastructure SEPP.

The original application was referred to Roads & Maritime Services (RMS) under Schedule 1 of the ISEPP. The Section 96 application was not referred back to RMS as the modifications do not affect any activity or development to Princes Highway.

The application is accompanied by a supplementary acoustic report prepared by Acoustic Dynamics (dated 3/12/14), which reviewed the proposed modifications. The report states that “the changes.... will result in negligible or insignificant changes to the overall acoustic amenity for the occupants of the subject development or surrounding sensitive receivers.”

It is considered that the conditions already imposed on the consent relating to noise attenuation are adequate and no further conditions are warranted.

The proposed development as modified satisfies the relevant provisions of SEPP (Infrastructure) 2007.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was issued for the original development and the commitments required by the BASIX Certificate have been satisfied.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The proposed integrated seniors living and residential aged care development is subject to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The proposed modification does not affect compliance with the provisions of the SEPP.

A number of modifications improve amenity to units or delete units with less than desirable amenity, such as the units in the lower ground floor level facing south.

State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP No 65)

The proposed development is subject to the provisions of SEPP No 65, which aims to improve the quality of residential flat design in NSW.

The application has been accompanied by a design verification statement from a qualified designer that verifies that:

- a) *He or she designed or directed the design of the modification, and*
- b) *The modifications achieve the design quality principles as set out in Part 2 of SEPP No 65, and*
- c) *The modifications do not diminish or detract from the design quality, or compromise the design intent of the approved development.*

The consent authority may refer the proposed modification to the relevant design review panel. Referral to the St George Design Review Panel is not considered necessary in this instance as the plans clearly demonstrate improvements to amenity of the units, result in a smaller development overall and negligible affectation on the aesthetics of the building.

The proposed development as modified is considered to satisfy the relevant provisions of SEPP No.65.

Deemed State Environmental Planning Policy – Georges River Catchment

All stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment.

- (ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*

A Planning Proposal for the New City Plan to amend Kogarah LEP 2012 is on exhibition from Monday 30 March 2015 until Friday 29 May 2015.

The New City Plan includes changes to zoning and the introduction of development standards in parts of the City to deliver a range of new housing options.

The New City Plan does not affect the zoning or development standards pertaining to the subject site. The approved 12 storey height limit is appropriate to the 12 storey height proposed for development in Kogarah Town Centre.

There are no other draft planning instruments that are applicable to this site.

(iii) *any development control plan,*

Kogarah Development Control Plan 2013 (KDCP 2013)

The proposed development is subject to the provisions of the Kogarah Development Control Plan 2013 (KDCP2013), in particular, Part E – Kogarah Town Centre.

The proposed modification does not affect compliance with the provisions of KDCP 2013.

Section 94 Contributions Plans

The application has been approved levying following Section 94 contributions in condition 5 of the development consent:

No.8 – Kogarah Town Centre – Streetscape, Open Space & Public Domain	\$1,717,562.75
No.8 – Kogarah Town Centre – Traffic Facilities	\$ 33,708.85
No.8 – Kogarah Town Centre – Community Facilities	\$ 30,619.14
No.9 – Kogarah Libraries – Buildings	\$ 28,334.02
No.9 – Kogarah Libraries – Books	\$ 20,202.08
TOTAL	\$1,830,426.84

As indexed, the contributions currently stand at \$1,935,534.24, until they are indexed again on 7 May 2015.

The proposed modifications reduce the number of ILUs and alter the mix of units. As modified the proposal comprises:

<i>Units</i>	<i>Approved DA</i>	<i>Proposed S.96</i>
Studio	14	9
1 Bed	20	4
1 Bed with utility	26	20
2 Bed	26	27
2 Bed with 2nd Toilet	36	-
2 Bed with 2 bathrooms & utility room	8	27

Based on the above reduction and reallocation of units, it is recommended that condition 5 be modified as follows:

As at the date of Development Consent the following contributions have been levied on the subject development under Section 94 of the Environmental Planning and Assessment Act, 1979 and the nominated Section 94 Contributions Plans:

No.8 – Kogarah Town Centre – Streetscape, Open Space & Public Domain	\$1,180,184.01
No.8 – Kogarah Town Centre – Traffic Facilities	\$22,567.80
No.8 – Kogarah Town Centre – Community Facilities	\$21,038.82
No.9 – Kogarah Libraries – Buildings	\$19,469.04
No.9 – Kogarah Libraries – Books	\$13,881.66
TOTAL	\$1,257,141.33

- (iv) *any matters prescribed by the regulations, that apply to the land to which the development application relates,*

Not applicable.

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

The proposed development as modified is of a scale and character that is in keeping with other development constructed in the locality. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment of the locality.

- (c) *the suitability of the site for the development,*

It is considered that the proposed development is of a scale and design that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments.

The application is supported by a Site Compatibility Certificate issued by the Minister for Planning and Infrastructure.

- (d) *any submissions made in accordance with this Act or the regulations,*

In accordance with the provisions of Section A2 – Public Notification of KDCP 2013 the application was placed on neighbour notification for a period of fourteen (14) days. Adjoining property owners were notified in writing of the proposal and invited to comment.

During this period Council received two (2) submissions.

The submissions raise concerns with traffic and parking impacts, construction related impacts and services for the increased population.

Comment

The objectors are Managers from two different departments in NSW Health and raise concern with the proposed development all related to the approved development. The proposed modifications reduce the size of the development, particularly the independent living units.

Consequently the impacts are reduced by the proposed modifications. Refusal of the proposal and construction of the approved development will result in a more impactful development than that proposed. The objections are unreasonable and considered to pertain to the approved development.

Mediation/Public Meeting

Telephone discussions were held with both objectors.

(e) the public interest.

The proposed development is of a scale and character that does not conflict with the public interest.

Conclusion

The application has been assessed having regard to the Heads of Consideration under Section 79C of the Environmental Planning and Assessment Act 1979, the provisions of KLEP 2012 and KDCP 2013.

Following detailed assessment it is considered that Development Application No 276/2013 should be approved subject to conditions.