

**JOINT REGIONAL PLANNING PANEL**  
**(Sydney West Region)**

JRPP No	<b>2016SYW003</b>
DA Number	<b>DA/544/2012/A</b>
Local Government Area	<b>Hornsby Shire Council</b>
Proposed Development	<b>Section 96(2) Modification Staged Seniors Living Development</b>
Street Address	<b>Bowden Brae Retirement Village, 40-50 Pennant Hills Road &amp; 1-17 Frith Avenue, Normanhurst</b>
Applicant/Owner	<b>The Uniting Church In Australia Property Trust</b>
Number of Submissions	<b>Nil</b>
Regional Development Criteria (Schedule 4A of the Act)	<b>General Development over \$20 Million</b>
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>• Section 96 EP&amp;A Act</li> <li>• SEPP Infrastructure 2007, SEPP Housing for Seniors or People with a Disability 2004, SEPP 65 Design Quality Apartment Development, Hornsby Local Environmental Plan.</li> <li>• Hornsby Development Control Plan</li> </ul>
List all documents submitted with this report for the panel's consideration	Locality Plan, Survey Plan, Demolition Plan, Massing Study, Site Plan, Modification Plans, SEPP 65 Statement, Approved Plans & Notice of Determination
Recommendation	<b>Approval</b>
Report by	<b>Garry Mahony</b>
Report date	<b>30 June 2016</b>

---

## ASSESSMENT REPORT AND RECOMMENDATION

### EXECUTIVE SUMMARY

- The application is for modification of the Staged development for redevelopment of the Bowden Brae Retirement Village. The modification would increase the number of independent living units from 111 to 137 units and revise resident support facilities.
- The proposed modification is substantially the same development as approved pursuant to Section 96 of the *Environmental Planning and Assessment Act, 1979* and is generally satisfactory in respect to the design principles of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The development consent is a valid consent notwithstanding that the approved development in terms of scale (Vertical Village) is no longer permissible.
- No submissions have been received in respect of the application.
- It is recommended that the application be approved.

### RECOMMENDATION

THAT pursuant to Section 96(2) of the *Environmental Planning and Assessment Act, 1979*, Development Application No. DA/544/2012 for Staged redevelopment of Bowden Brae Retirement Village at Lots 3 and 4 DP 1077836, Lots 11-14 DP 27914, Nos. 40-50 Pennant Hills Road and Nos. 9, 11, 15 and 17 Frith Avenue, Normanhurst be amended as detailed in Schedule 1 of this report.

---

## BACKGROUND

On 18 April 2013, the Sydney West Joint Regional Planning Panel approved Staged Development Application DA/544/2012 for the redevelopment of the Bowden Brae Retirement Village at Normanhurst.

Stage 1 is for the development concept and demolition of existing buildings.

Stage 2 is subject to a future development application and is for further demolition and construction of four buildings ranging in height from three to six storeys and comprising 111 independent living units, basement car parking and facilities for Seniors Living residents.

On 20 August 2015, the applicant attended a Pre-DA Meeting (PL/97/2015) with Council officers concerning the proposed modification of DA/544/2012 and the lodgement of a development application for Stage 2. The applicant informed Council of Uniting's project revision for its on-going program for integrated service delivery for aging in place. The applicant was requested to address how the modification is substantially the same development pursuant to Section 96.

On 11 December 2015, the subject Section 96(2) application was lodged accompanied by Development Application DA/1613/2015 for construction of Stage 2 phase of the development as modified by the subject application. The applications are assessed concurrently.

On 26 May 2016, Council officers briefed the Sydney West Joint Regional Planning Panel concerning the proposed modification. The Panel raised concerns regarding the proposal to delete the respite care facility detailed on the approved plans DA/544/2012.

On 22 June 2016, the applicant submitted amended plans for inclusion of a respite care facility, correction Building D Level 6 footprint and amendment Building C and D Level 5 resident facilities and administrative areas.

## SITE

The site includes the Bowden Brae Retirement Village which includes independent living units, a hostel and a residential care facility, operated by Uniting Care Aging in association with the Uniting Church. Bowden Brae has approximately 252 residents and employs approximately 120 staff.

The site generally forms a uniform street block bounded by the northern side of Pennant Hills Road, L shaped Frith Avenue and the western side of Jasmine Road. The site has an area of 21,580m<sup>2</sup> and includes the following properties:

Property	Description
Nos. 1-7 Frith Avenue	Residential Care Facility comprising 60 high care places and 40 low care dementia places within a two-three storey building with central courtyard and basement car parking, fronting Frith Avenue. Completed in 2004.
No. 9 Frith Avenue	House
No. 11 Frith Avenue	House

No. 13 Frith Avenue	House
No. 15 Frith Avenue	House
No. 17 Frith Avenue	House
Nos 40-50 Pennant Hills Road	Hostel with 66 nursing home beds within a four storey residential building (vacant) and 83 self-contained dwellings within three, four to five storey residential flat buildings. All buildings are linked by external walkways. Completed in 1974.

The site has an average fall of 9% across the site from the Pennant Hills Road frontage to the Frith Avenue frontage and has a north westerly aspect. The site has a frontage of 160m to Pennant Hills Road (east boundary), a frontage of 175m to Frith Avenue (north boundary) and 90m (west boundary) and a frontage of 110m to Jasmine Road (south boundary).

The house at No. 19 Frith Avenue on the corner of Jasmine Road is not part of the site and is the only allotment within the street block not owned by the applicant.

The site includes numerous trees of indigenous and non-indigenous species located in the central part of the site, along the Pennant Hills Road frontage and along the Jasmine Road frontage.

The site is within 100m of bus stops on Pennant Hills Road (Route 589). Pedestrian crossings of Pennant Hills Road at the corner of Jasmine Road and at the corner of Hinemoa Avenue are controlled by traffic lights and enable access to the bus stops on the opposite sides of Pennant Hills Road.

The site is located 500m east of Normanhurst Railway Station and shops.

The surrounding developments include Normanhurst Boys High School which occupies a large site bounded by Jasmine Road, Pennant Hills Road, Fraser Road and Denman Parade. Dwelling houses on suburban lots are located opposite the site on Frith Avenue and on Pennant Hills Road. The Greenwood residential care facility redevelopment has recently been completed at Nos. 9-17 Hinemoa Avenue, Normanhurst, south of the site.

Pennant Hills Road carries significant traffic volumes (60,000+ vehicles per day) and physically divides the suburb of Normanhurst. The intersection with Jasmine Road is controlled by traffic lights.

The site is not affected by the NorthConnex motorway currently under construction in the vicinity of the site.

## **APPROVED DEVELOPMENT**

The staged development approval is for the redevelopment of Bowden Brae Retirement Village.

Stage 1 is for the demolition of existing buildings and dwelling houses.

Stage 2 is for demolition work and construction of four, three to six storey buildings comprising 111 independent living units (IDL units), basement car parking and other facilities including a chapel, men's shed, library, café, wellness centre, dementia day care centre, pool and gymnasium. Stage 2 is subject to a further development application for construction of the development (DA/1613/2015).

## PROPOSED MODIFICATION

The proposed modification of the approved concept plans includes the following amendments:

- |                   |   |
|-------------------|---|
| <b>Basement</b>   | <p>Level 1 - basement for Building A is redesigned to reduce the extent of the basement car park.</p> <p>Level 2 - basement for Building B is redesigned for plant and storage, deleting car parking provision.</p> <p>Level 3 - basement for Building B, C and D is redesigned to reduce the extent of the basement car park, increase the setback from Pennant Hills Road and delete the subway connection to the existing residential care facility basement.</p> <p>The proposed modification would not substantially alter the Stage 1 Concept car parking provision of 90 to 130 spaces. Detailed parking design is subject to Stage 2.</p>   |
| <b>Building A</b> | <p>The building setbacks for the three storey building component are revised from 10.4m to 11.2m at the northern elevation to Frith Avenue and from 10m to 11.4m at the western elevation to Frith Avenue. At the southern elevation, the building separation with the house at No. 19 Frith Avenue is revised from 14.9m / 10.4m to 16.1m / 6.4m / 10.4m. The building separation of the six storey component with Building B is revised from 11.0m to 16.5m. The building separation with the existing Residential Care Facility fronting Frith Avenue is revised from 12m to 11.1m.</p> <p>The L shaped building is 3 storey aligned east-west at the Frith Avenue frontage and is 6 storey aligned north-south at the rear.</p> <p>The building footprint of the rear north-south component is reduced and the subway pedestrian link with the existing residential care facility is deleted. The northern elevation of the building's sixth storey is revised to replace the roof top garden with additional units and to extend the core. The maximum height of the building would reduce from RL1991.1 to RL 198.9. The height of the three storey east-west aligned building fronting Frith Avenue would remain the same at RL 189.5.</p> |
| <b>Building B</b> | <p>The building separation with the existing house at No. 19 Frith Avenue is revised from 16m to 15.4m. The building separation with Building C is revised from 18m to 17.6m.</p> <p>The 6 storey building includes a lower ground floor level which is revised to include additional space for plant and storage. The upper floor gardens are replaced with additional units and the lift core is relocated. The height of the northern section of the building would increase from RL192.7 to RL 198.9. The height of the remainder of the building would remain the same as approved at RL 202.3 and the lift core at RL 205.6. The ground floor chapel, library and common area are replaced with IDL units and relocated to Building D.</p>  |
| <b>Building C</b> | <p>The building setback from Pennant Hills Road is revised from 9.8m to 10.6m. The floor levels are increased from 7 to 8 storeys. The ground floor facilities and lift locations are revised.</p>  |

The approved ground floor mezzanine is amended to form a separate floor for IDL units increasing the number of storeys from 7 to 8 storeys. The mezzanine administrative office space and storage space is deleted. The ground floor administrative spaces and resident facilities are revised. The approved maximum building height would remain the same at RL 213.8.

**Building D** The building setback from Pennant Hills Road is revised from 11.3m to 12.7m. The building separation with the existing residential care facility is revised from 10.9m / 7.9m to 6.9m / 6.6m.

The 7 storey building forms a wing of Building C with combined ground floor facilities and connecting floors. The ground floor facilities are revised. The pool is deleted and replaced with a chapel and lounge/activities/library areas. The day care centre and respite beds are revised from 6 beds to 5 beds. The forecourt connection with the existing residential care facility is revised with the addition of a lift to the western elevation of the residential care facility and deletion of the first floor link with Building D.

The approved maximum height of Building D remains the same at RL208.3.

The proposed modification would increase the number of IDL units from 111 to 137. The proposal maintains the approved floor space ratio of 1.06:1.

The proposed modification would increase the height of Building A (Level 5) by 100mm, increase the height of Building C by 400mm, and the height of Building D by 480mm.

The applicant submits the proposed modification follows design review including concept feasibility and the operational administrative requirements of Uniting Care, a reduction in unit size and revised unit mix, and cost efficiencies in the reduced extent of excavation.

The application also includes modification of Condition No. 14 to allow referral of detailed design drawings and geotechnical reports at the construction stage of Building C and Building D adjoining Pennant Hills Road. The accompanying application DA/1613/2015 for construction of the development includes the proposed staging of the construction development (Stage 2).

## **ASSESSMENT**

The development application has been assessed having regard to 'A Plan for Growing Sydney', the 'North Subregion (Draft) Subregional Strategy' and the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

### **1. STRATEGIC CONTEXT**

#### **1.1 A Plan for Growing Sydney and (Draft) North Subregional Strategy**

*A Plan for Growing Sydney* has been prepared by the NSW State Government to guide land use planning decisions for the next 20 years. The Plan sets a strategy for accommodating Sydney's future population growth and identifies the need to deliver 689,000 new jobs and 664,000 new homes

by 2031. The Plan identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Manly, Mosman, North Sydney, Pittwater, Ryde, Warringah and Willoughby to form the North Subregion. The *Draft North Subregional Strategy* will be reviewed and the Government will set housing targets and monitor supply to ensure planning controls are in place to stimulate housing development.

The proposed modification would be consistent with 'A Plan for Growing Sydney', by providing for additional housing for an aging population.

## **2. STATUTORY CONTROLS**

Section 79C(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

### **2.1 Section 96(2) Environmental Planning and Assessment Act, 1979 (EP & A Act)**

The proposed modification is subject to the provisions Section 96(2) of the EP & A as follows:

(2) *Other modifications*

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with:*
  - (i) *the regulations, if the regulations so require, or*
  - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

- 
- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*
- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

In respect to Section 96(2)(a) the proposed modification is considered substantially the same development as approved as discussed in Section 2.1.1 below.

In respect to Section 96(2)(b) the application was referred to Roads and Maritime Services. The Service has raised no objection to the proposed modification. Refer to Section 5.2.

In respect to Section 96(2)(c) and (d) the application was notified in accordance with the *Hornsby Development Control Plan 2013* and no submissions were received in response to the notification.

#### **2.1.1 Substantially The Same Development**

The Land and Environment decision in *(Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280) regarding whether a modification is substantially the same development as approved determined a quantitative and qualitative assessment was required to establish substantially the same as a basis of fact.

The applicant submitted a plan analysis of the proposed building footprints showing where the building footprint is decreased and increased, together with a plan study of the massing of the proposed building which highlights the difference with the approved plans.

These plans provide a quantitative assessment which demonstrates that the increases and decreases in floor areas of the respective levels of the development as proposed, maintain the approved floor space and floor space ratio of 1.06:1.

The proposed modification includes additional units and conversion of rooftop terrace areas to residential units. The conversion of the rooftop terrace areas to units generally maintains the approved floor levels and would not increase the overall height by forming an additional storey. In this regard, the additional roof top floor areas of Building A and Building B maintain the approved storey height and built form. The maximum building height of Building A would reduce from RL199.1 to RL198.9 and the maximum building height of Building B would remain at RL205.6 and remain essentially the same.

The additional areas proposed for the roof top component at the northern elevation of Building A are setback 28m from Frith Avenue and would not significantly detract from the Frith Avenue streetscape as approved. The additional top floor areas at the northern elevation of Building B would not significantly detract from the residential amenity of the adjoining dwelling house at No. 19 Frith Avenue, given the approved interface with regard to the higher site elevation of Building B and the building separation of 15.4m.

The proposal would result in additional overshadowing of the southern corner open space area of No. 19 Frith Avenue at 10.00am but would be acceptable in maintaining 4 hours of sunlight access to the dwelling between 9am and 3pm.



The additional top floor areas proposed at the western elevation of Building B would not result in overshadowing of any proposed common or public open space areas or detract from the amenity of the adjacent Normanhurst Boys High School.

While the proposed modification would increase the bulk and scale of the top floor of Building A's rear wing and the top floor of Building B, the impact of the increase is substantially the same in respect to the overall massing of the buildings, the approved streetscape amenity of Frith Avenue, the amenity of the existing house at No. 19 Frith Avenue and the adjacent high school.

The proposed modification would convert the ground floor/mezzanine of Building C to ground floor and a new first floor increasing the number of storeys from 7 to 8 storeys. The increase in the number of floors would maintain the approved maximum building height of RL 213.8. The bulk and scale of the Building C and ground floor resident facilities and administration would remain substantially the same.

The proposed modification would convert the ground floor swimming pool and residential facilities of Building D to chapel and lounge/activities/library areas increasing the ground floor area of Building D. The bulk and scale of the building and the maximum building height RL 208.3 would remain the same.

The proposed modification would reduce the basement car parking area and the extent of excavation. The proposed basement modification would provide for 123 car parking spaces which is consistent with the approved concept plans which were to provide for 90-130 car parking spaces. The car parking requirement pursuant to Clause 50 of the SEPP Seniors Living is 28 car parking spaces (1 per 5 dwellings). The car parking layout and design is subject to Stage 2 of the development.

A qualitative assessment demonstrates the proposed modification would result in a more positive environmental outcome as follows:

- The proposal would result in less excavation providing additional landscaping and better amenity;
- The setbacks of Building A to Frith Avenue and to the adjoining dwelling house at No. 19 Frith Avenue, Normanhurst would increase providing a better transition to low density housing developments; and
- The setback of Building C and the basement car park from Pennant Hills Road would increase, maintaining existing trees and public road infrastructure.

Therefore, in respect to a quantitative and qualitative assessment the proposed modification is considered substantially the same development as approved, in respect to Section 96(2)(a).

## **2.2 Hornsby Local Environmental Plan 2013**

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

### **2.2.1 Zoning of Land and Permissibility**

The subject land is zoned R2 Low Density Residential under the *HLEP*. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The development subject of the proposed modification is defined as 'seniors housing' and is prohibited in the R2 Low Density Residential zone under *HLEP*.

The proposed modification is subject to the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors Living)* which prevails to the extent of any inconsistency with *HLEP*.

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

*SEPP Seniors Living* is the prevailing planning instrument for the development of housing for aged and disabled persons in NSW and provides for hostels, residential care facilities, self-contained dwellings and multi-storey dwellings, on land zoned for urban purposes.

*SEPP Seniors Living* includes land use planning provisions, design principles, development standards and standards specific to meet the housing needs of seniors and people with a disability.

#### **2.3.1 Vertical Villages**

The approved development was subject to the provisions of the *SEPP Seniors Living* Clause 45 Vertical Villages which then applied to the site prior to *HLEP* coming into force on 11 October 2013. The effect of the *HLEP* prohibits residential flat building on the subject land and accordingly, the approved development in terms of scale as a Vertical Village is not permissible under *SEPP Seniors Living* since *HLEP* came into force.

The approved development has not yet commenced. The consent would lapse effectively on 18 April 2018. The consent is a valid consent and can lawfully be modified pursuant to Section 96 of the *Environmental Planning and Assessment Act, 1979*, notwithstanding that the development is prohibited; as determined in the Land and Environment Court decision in *Leslie Houlton v Woollahra Municipal Council* [1997] NSWLEC 103.

The proposed modification maintains the approved 1.06:1 floor space ratio. The approved non-compliance with the applicable 0.9:1 floor space ratio was satisfactory in respect to the well-founded objection to the floor space ratio standard under Clause 45(2) of *SEPP Seniors Living*, in accordance with *State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)*. A *SEPP 1* objection in respect to the subject Section 96 modification is not required as determined in the Court of Appeal in *Sydney Council v Michael Standley & Associates Pty Ltd* (1998); in consideration of a Section 79C assessment.

The proposed modification increases the number of units from 111 IDL units to 137 IDL units. At least 10% of dwellings must be affordable pursuant to Clause 45(6)(a)(ii) of *SEPP Seniors Housing*. The current consent condition No. 12 would address this requirement for the Stage 2 construction as submitted under DA/1613/2015.

#### **2.3.2 Accessibility**

The *SEPP Seniors Living* includes mandatory standards for accessibility and useability of dwellings for Seniors Living developments to ensure wheelchair accessibility throughout the development and to a public road and to ensure circulation space and accessible fixtures and fittings within dwellings. Mandatory standards also apply for access to public transport, medical services and shops.

The proposed modification does not alter the approved concept in respect to the mandatory accessibility requirements.

The detailed floor plans for the 137 IDL units and associated facilities and the common open space areas are subject to the construction Stage 2 development application DA/1613/2015 in respect to accessibility assessment.

### **2.3.3 Design Principles**

The *SEPP Seniors Living* includes provision for the proposal to have regard to the following design principles

#### **a. Neighbourhood Amenity and Streetscape**

The proposed modification would increase the area of the top sixth floor of the north-south wing of Building A at the northern elevation and the top floor areas of Building B at the western and northern elevations.

The north-south wing of Building A is setback 28m from Frith Avenue. The applicant makes the following submission in respect to the proposed impact on the streetscape and neighbourhood amenity:

*The urban composition of street trees, generous setbacks and well-articulated building volume allow the proposed building to sit comfortably across from the houses on the northern side of Frith Avenue. The main volume of the proposed building aligns with the datum set by the tree canopies which define the streetscape.*

*The proposed siting and scale of Building A is compatible with the streetscape of Frith Avenue which is defined by the road, the four metre wide grass verges, generous setbacks and 15 metre high street trees.*

*The central seven storey (north-south) wing of the building is configured to provide a clear articulation between the three storey rectangular prism of Frith Avenue and the seven storey central arc-like wing.*

The applicant's submission is acceptable in demonstrating the proposed increase in the top floor area of the rear wing of Building A would not significantly alter the impact of the development on the Frith Avenue streetscape as compared to the approved development.

The proposed additions to the top floors of Building B are consistent with the approved building in respect to the impact on the amenity of the adjoining dwelling house at No. 19 Frith Street.

The proposed modifications to Building C and to Building D involve a greater setback from Pennant Hills Road and would marginally reduce the bulk and scale of the approved development in the streetscape.

The site was previously identified as a heritage item under Hornsby Shire LEP 1994 in respect to the garden within the grounds of the existing residential care facility (Nos 1-7 Frith Avenue, Normanhurst

---

Lot 3 DP 1077836). The item was deleted in Amendment No. 4 of *HLEP* on 19 September 2014. The site is in the vicinity of two items of heritage listed under *HLEP* as follows:

No. 45 Pennant Hills Road, Normanhurst - House

No. 41 Pennant Hills Road, Normanhurst - "Chislehurst", house

The applicant's submitted Heritage Impact Statement is supported in respect to the local significance of the items for Federation housing, the significant separation of Pennant Hills Road and the existing landscaping and fencing which creates a buffer with the new development. Accordingly, the proposed amendments would not result in an additional impact on heritage significance of the items in the vicinity of the site.

The proposed modification is acceptable in respect to the requirements of the SEPP Seniors Living for neighbourhood amenity and streetscape.

**b. Visual and Acoustic Privacy**

The proposed modification involving additional units to the upper floors of Building A and Building B are appropriately sited to maintain the approved spatial relationship with neighbouring dwelling houses in respect to visual and acoustic privacy.

The proposed modification to Building C and Building D are internal to the site and would maintain the approved interface between the buildings and would not detract from the visual and acoustic privacy of neighbouring residents.

The applicant submitted an updated acoustic assessment prepared by Acoustic Logic dated 23/10/2015 which includes a recommendation for glazing to mitigate traffic noise impacts and meet required noise criteria. The acoustic assessment is required for the Stage 2 development application DA/1613/2015.

**c. Solar Access and Design For Climate**

The approved development results in some overshadowing of the adjoining residents at No. 19 Frith Avenue, Normanhurst, between 9am and 11am, 22 June. The proposed modification would result in reduced overshadowing of the dwelling house and a minor increase in overshadowing of an area of private open space. The proposed overshadowing is between 9am and 11am and would not result in non-compliance with Council's requirement for 3 hours of sunlight access to dwelling house private open space and is acceptable in this regard.

The majority of the proposed additional floor space for the dwelling increase is at the northern and western elevations of the approved buildings and would have access to sunlight.

The submission of a BASIX Certificate is required for the construction Stage 2 development application DA/1613/2015.

**d. Stormwater**

The stormwater drainage for the approved redevelopment is to Council's existing stormwater drainage system in Frith Avenue.

The construction Stage 2 development application (DA/1613/2015) will require implementation of Council's stormwater management requirements for on-site detention and water quality, in accordance with the *Hornsby Development Control Plan 2013*.

The proposed modification is satisfactory in respect to the *SEPP Seniors Living* design principle for stormwater.

**e. Crime Prevention**

The proposed modification would not alter the approved site layout and entry points which ensure Crime Prevention Through Environmental Design principles (CPTED) for surveillance, access control, space management and territorial reinforcement are able to be implemented.

The construction Stage 2 development application (DA/1613/2015) is to address crime prevention.

**f. Accessibility**

The proposed modification does not alter the approved siting of buildings to ensure design for accessibility to all levels within the development and to provide for continuous paths of travel. In this regard, the approved development is able to comply with access requirements of Clause 26 of the *SEPP Seniors Living* subject to the kerb ramps at the Jasmine Road signalised crossing being upgraded for access requirements and for seating at the steeper footpath section at the Jasmine Road frontage.

The construction Stage 2 development application (DA/1613/2015) is to detail necessary measures for the redevelopment to comply with the *SEPP Seniors Living*, the *Disability Discrimination Act 1992*, the *Building Code of Australia* and the *Disability (Access to Premises – Buildings) Standard 2010*.

**g. Waste Management**

The proposed modification would not alter the approved concept which is satisfactory in providing for design for waste management in accordance with the *Hornsby Development Control Plan 2013* requirements.

Current conditions are appropriate for waste management for demolition works approved for Stage 1 of the development.

The construction Stage 2 development application (DA/1613/2015) is to detail waste management design for waste storage and collection and waste management during construction.

**2.3.4 Standards for Self-Contained Dwellings**

The *SEPP Seniors Living* includes standards for landscaped area, deep soil zones, solar access, private open space and car parking, whereby compliance cannot be used for grounds for refusal.

**a. Landscaped Area / Deep soil Zone**

The proposed modification would reduce the building footprint and provide additional deep soil area increasing from 34% to 38% and additional landscaping which would increase from 52% to 59%.

The proposed modification would comply with the *SEPP Seniors Living* requirement for a minimum of 30% of the site area to be landscaped and for a minimum of 15% deep soil zone.

---

**b. Solar Access**

The proposed modification would maintain the site layout for Buildings A, B, C and D which are oriented to maximise solar access and provide for design for solar access for dwellings in compliance with the *SEPP Seniors Living* solar access requirement for a minimum of 70% of dwellings to receive a minimum of 3 hours of sunlight between 9am and 3pm, mid-winter.

**c. Private Open Space**

The approved concept plans do not detail dwelling floor plans or private open space areas which are subject to the construction Stage 2 development application (DA/1613/2015).

**d. Parking**

The approved concept basement areas provide for 90 to 130 car parking spaces subject to detailed design for the number of spaces required for the final accommodation mix.

The proposed modification would allow for 123 car parking spaces in the basement and 16 external on-site spaces. The proposal would increase the number of dwellings from 111 independent living units to 137 units. The accommodation mix is subject to the construction Stage 2 development application (DA/1613/2015) for the bedroom range and dwelling mix. Notwithstanding, the amended concept as proposed is capable of providing more than the required number of car parking spaces in accordance with the *SEPP Seniors Living* requirement for 1 car space per five dwellings where development is by a social housing provider.

The proposed modification is therefore acceptable in respect to car parking.

**2.4 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)**

SEPP 65 provides for design principles to improve the design quality of residential flat development and for consistency in planning controls across the State.

The applicant submitted a design statement prepared by the project architects PTW in respect to the proposed modification and the design principles of SEPP 65. The statement provides a comprehensive critique of the approved development and the proposed modification against the SEPP 65 design principles and concludes the modification would not alter the fundamental relationships of the approved concept design or create any adverse impact on adjacent properties. The applicant's design statement is supported in respect to the proposed modification and forms an attachment to this report.

The construction Stage 2 development application (DA/1613/2015) is to include detailed floor plans and elevations of Buildings A, B, C and D which are subject to the SEPP 65 Apartment Design Guide criteria.

**3. ENVIRONMENTAL IMPACTS**

Section 79C(1)(b) of the Act requires Council to consider *"the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*.

**3.1 Natural Environment**

---

### **3.1.1 Tree and Vegetation Preservation**

A number of trees have been removed from the site since the development approval including Trees Nos. 12, 13, 34, 37, 63, 68 and 140 and a number of trees are now dead (Trees Nos. 14, 21 and 119).

There are now 142 trees on the site including 15 trees which are characteristic of Blue Gum High Forrest (BGHF) a critically endangered ecological community (Trees Nos. 16, 17, 20, 24, 25, 26, 27, 36, 39, 41, 46, 81, 94, 81 and 104). The approved development involves the removal of four of the BGHF trees (Trees Nos. 17, 20, 24 and 25). The proposed modification would remove a further three BGHF trees (Trees Nos. 16, 27, 36). Tree No. 16 - *Angophora floribunda* (Rough-barked Apple) and Tree No. 36 - *Brachycitron acerifolius* (Flame Tree) would be removed for the modified proposal and Tree No. 27 - *Eucalyptus saligna* (Sydney Blue Gum) has poor structural form and is recommended for removal.

The applicant submitted an 'Updated Ecological Impact Assessment' prepared by Keystone Ecological dated December 2015, which includes an impact assessment pursuant to Section 5A *Environmental Planning and Assessment Act 1979*. The assessment determined the site would not qualify as an example of BGHF and that the proposal will not result in a significant adverse impact on the critically endangered ecological community BGHF.

The original proposal was for the removal of 75 trees which was revised following design amendments and tree protection measures, to the removal of 59 trees. The proposed modification includes further tree assessment, in accordance with AS 4970 - *Protection of Trees on Development Sites*, and identifies 68 trees that would require removal.

The proposed removal of the nominated trees would be acceptable subject to replacement tree planting to maintain the tree canopy. Tree removal and further assessment in this regard would be subject to the Stage 2 Construction DA/1613/2015.

## **3.2 Built Environment**

### **3.2.1 Built Form**

The proposed modification would maintain the approved concept for a Seniors Living redevelopment integrated with the existing residential care facility, providing a functional retirement village with appropriate services and facilities.

Architectural details, materials and finishes and landscaping are subject to the Stage 2 Construction DA/1613/2015 in respect to the surrounding built environment.

### **3.2.2 Traffic**

The proposed modification would increase the number of independent living units from 111 units to 137 units. The applicant submitted a Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd dated 1 December 2015. The report states the proposed modification would generate 6 vehicle trips during commuter peak periods.

The redevelopment overall would generate 56 vehicle trips in the weekday peak hour in accordance with the Roads and Maritime Services (RMS) *Guide to Traffic Generating Developments* (TDT 2013/04a) AM peak hour trip rate of 0.4 per Seniors Housing dwelling. The existing traffic conditions

on Frith Avenue and Jasmine Road are typically 60 vehicles peak hour. The RMS capacity performance standard for a local road is 300 vehicles peak hour. The estimated traffic generation therefore would not detract from the efficiency of the local road network or Pennant Hills Road.

The report states the A level of service rating for the intersection of Pennant Hills Road and Frith Avenue and for the intersection of Pennant Hills Road and Jasmine Road would remain unchanged.

The proposed modification is acceptable in respect to traffic generation.

### **3.3 Social Impacts**

The proposed modification is substantially the same development as approved in providing improved services and facilities for the existing retirement village and increase capacity for provision for on-site support services for an aging population. The proposed modification as amended revises the approved respite care facility with 6 suites to 5 suites including a larger suite and larger kitchen dining area. The modification in this regard is acceptable.

The proposal would be of positive social benefit for the wider community.

### **3.4 Economic Impacts**

The proposed modification is substantially the same as the approved development in generating economic activity in the construction of the development and in the provision of local employment and would benefit the local economy.

## **4. SITE SUITABILITY**

Section 79C(1)(c) of the Act requires Council to consider *"the suitability of the site for the development"*.

The proposed modification would not alter the suitability of the site which is an existing retirement village.

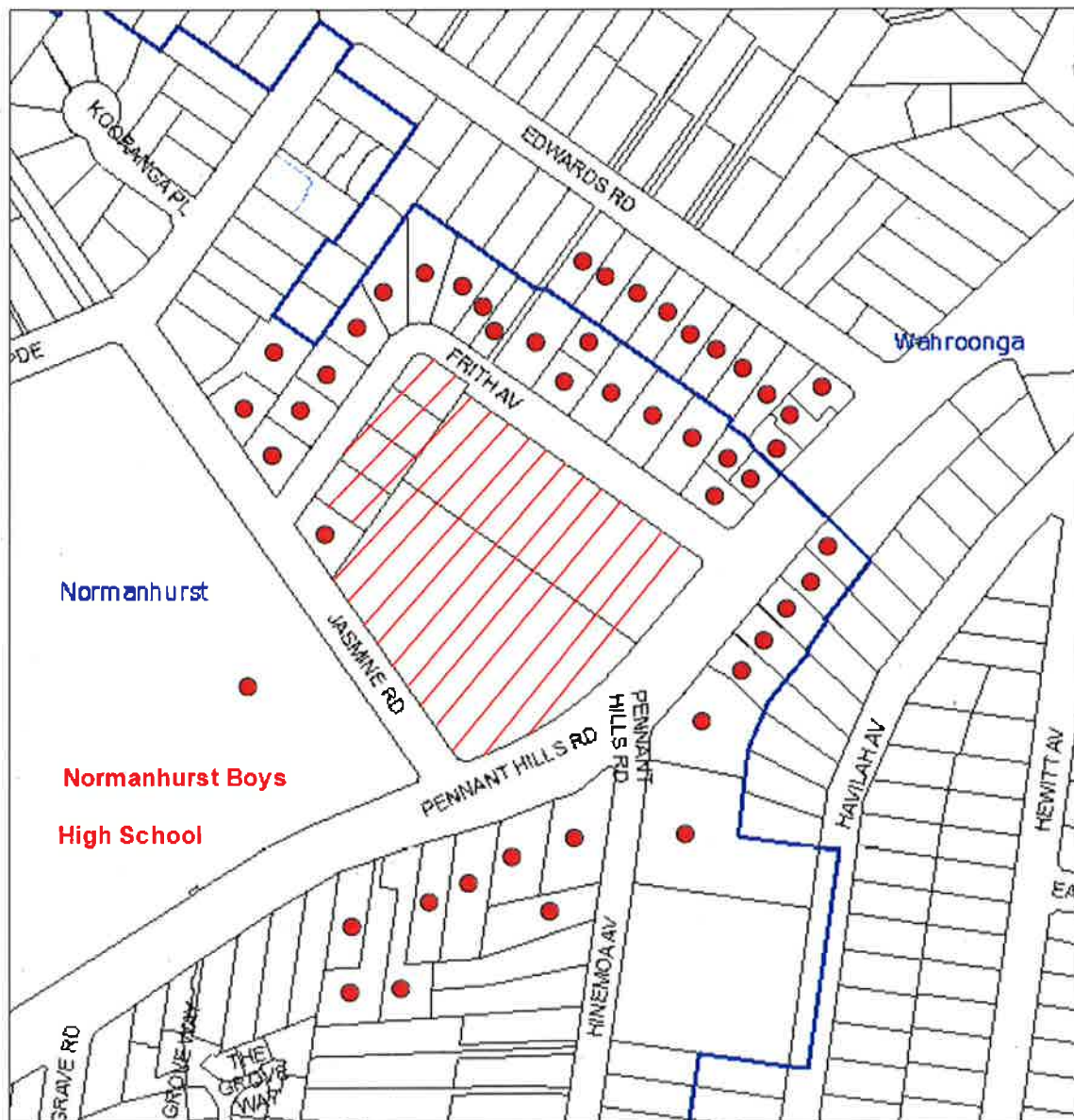
## **5. PUBLIC PARTICIPATION**

Section 79C(1)(d) of the Act requires Council to consider *"any submissions made in accordance with this Act"*.


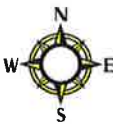
### **5.1 Community Consultation**

The proposed modification was placed on public exhibition between 14 January and 28 January 2016 and was notified to adjoining and nearby landowners and previous respondents to the original application, in accordance with the Notification and Exhibition requirements of the HDCP. Council received no submissions in response to the notification.





**NOTIFICATION PLAN**

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
-----------------------	------------------------	---	---

## 5.2 Public Agencies

The application was referred to the Roads and Maritime Services (RMS) for comment in respect to the proposed modification.

The RMS raised no objection to the proposed modification and also advised no objection to the proposed modification of the RMS Condition No. 14 relating to excavation adjacent to Pennant Hills Road.

Condition No. 14 is as follows:

- 14.** *The developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to RMS for assessment and concurrence. The developer is to meet the full cost of the assessment by the RMS.*

*This report would need to address the following key issues:*

- a. The impact of excavation /rock anchors on the stability of Pennant Hills Road and detailing how the carriageway would be monitored for settlement.*
- b. The impact of the excavation on the structural stability of Pennant Hills Road.*

The proposed modification of Condition No. 14 is as follows:

- 14.** *The developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to RMS for assessment and concurrence prior to the Stage 3 works for Buildings C and D. The developer is to meet the full cost of the assessment by the RMS.*

*This report would need to address the following key issues:*

- a. The impact of excavation /rock anchors on the stability of Pennant Hills Road and detailing how the carriageway would be monitored for settlement.*
- b. The impact of the excavation on the structural stability of Pennant Hills Road.*

Stage 3 is the subject of a staging plan which is proposed in the construction Stage 2 development application (DA/1613/2015). In this regard, the proposed modification is acceptable as the subject DA/455/2012/A application and DA/1613/2015 are to be considered concurrently.

## **6. THE PUBLIC INTEREST**

Section 79C(1)(e) of the Act requires Council to consider “the public interest”.

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

The application is considered to have satisfactorily addressed Council's and relevant agencies' criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed modification would be in the public interest.

## **7. CONCLUSION**

The application is for modification of the Staged development for redevelopment of the Bowden Brae Retirement Village. The modification would increase the number of independent living units from 111 to 137 units and revise the residential support facilities.

---

The proposed modification is substantially the same development as approved pursuant to Section 96 of the *Environmental Planning and Assessment Act, 1979* and is generally satisfactory in respect to design principles of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The approved development in terms of scale (Vertical Village) is no longer permissible on the site. Notwithstanding the development consent is a valid consent and can be modified pursuant to Section 96.

The application has been assessed in conjunction with the Stage 2 Development Application (DA/1613/2015) for construction of the approved Stage 1 concept as modified by this application.

No submissions have been received in respect of the application.

Approval of the proposed modification is recommended including the modification of Condition No. 11 for the submitted plans and the modification of Condition No. 14 for the Roads and Maritime Services requirement.

**Attachments:**

1. Locality Plan
2. Survey Plan
3. Demolition Plan
4. Massing Study
5. Site Plan
6. Modification Plans
7. SEPP 65 Statement
8. Notice of Determination
9. Approved Plans

---

**Schedule 1**

---

**Date of this modification** 14 July 2016

**DA/544/2012/A:**

**Details of this modification:** Section 96(2) modification to increase the number of independent living units from 111 to 137 and to revise resident facilities.

**Conditions Added:** Nil

**Conditions Deleted:** Nil

**Conditions Modified:** 11, 14

---

---

## CONDITIONS OF APPROVAL

### STAGE 1

#### GENERAL CONDITIONS

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

*Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.*

*Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation, or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.*

#### 1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

<b>Plan No.</b>	<b>Drawn by</b>	<b>Dated</b>
A-DA-PS-02 Demolition Plan Stage 1	PTW Architects	03/09/2012

<b>Document No.</b>	<b>Prepared by</b>	<b>Dated</b>
D01940301 Waste Management Plan	Waste Audit And Consultancy Sevices	May 2012

#### 2. Dilapidation Report

A 'Dilapidation Report' is to be prepared by a 'chartered structural engineer' detailing the structural condition of the adjoining property at No. 19 Frith Street Normanhurst.

---

**3. Erosion and Sediment Control**

Erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual *'Soils and Construction 2004 (Bluebook)'*, the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties up to \$1,500 may be issued for any non-compliance with this requirement without any further notification or warning.*

**4. Construction Work Hours**

All work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday, in accordance with *Interim Construction Noise Guidelines 2009 – NSW Department of Environment and Climate Change*.

No work is to be undertaken on Sundays or public holidays.

**5. Demolition**

All demolition work must be carried out in accordance with *Australian Standard 2601-2001 – The Demolition of Structures* and the following requirements:

- a. Demolition material is to be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health and Safety Regulation 2001* and Clause 29 of the *Protection of the Environment Operations (Waste) Regulation 2005*.
- c. On construction sites where buildings contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm must be erected in a prominent position visible from the street.

**6. Environmental Management**

The site must be managed in accordance with the publication *'Managing Urban Stormwater – Landcom (March 2004)'* and the *Protection of the Environment Operations Act 1997* by way of implementing appropriate measures to prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction of the development.

---

**7. Council Property**

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

**8. Construction Traffic Management Plan**

A Construction Traffic Management Plan is to be submitted to Council for the Stage 1 demolition work detailing, inter alia, heavy vehicle traffic routes, employee parking areas, truck standing areas, construction site access points, detour arrangements (if required), traffic control measures, duration of traffic disruption, contingency and emergency measures and method of public notification.

The Plan is to be endorsed by Council's Traffic and Road Safety Branch prior to commencement of demolition works.

**9. Works near Trees**

All required tree protection measures are to be maintained in good condition for the duration of the construction period.

All works (including driveways and retaining walls) within 4 metres of any trees required to be retained (whether or not on the subject property, and pursuant to this consent or the *Tree Preservation Order*), must be carried out under the supervision of an 'AQF Level 5 Arborist' and a certificate submitted to the principal certifying authority detailing the method(s) used to preserve the tree(s).

*Note: Except as provided above, the applicant is to ensure that no excavation, filling or stockpiling of building materials, parking of vehicles or plant, disposal of cement slurry, waste water or other contaminants is to occur within 4 metres of any tree to be retained.*

**10. Street Sweeping**

Street sweeping must be undertaken following sediment tracking from the site along Frith Avenue and Jasmine Road during works and until the site is established.

**STAGE 2**

**11. Development Application**

A development application must be submitted for construction of the development generally in accordance with the plans and documentation listed below as modified by the Section 96 plans and endorsed with Council's stamp, except where amended by other conditions of this consent:

<b>Plan No.</b>	<b>Drawn by</b>	<b>Dated</b>
A-DA-00 Revision D Site Plan	PTW Architects	08/02/2013
A-DA-01 Revision D Level 1 Plan	PTW Architects	08/02/2013
A-DA-02 Revision D Level 2 Plan	PTW Architects	08/02/2013
A-DA-03 Revision D Level 3 Plan	PTW Architects	08/02/2013
A-DA-04 Revision D Level 4 Plan	PTW Architects	08/02/2013
A-DA-05 Revision D Level 5 Plan	PTW Architects	08/02/2013
A-DA-06 Revision D Level 6 Plan	PTW Architects	08/02/2013
A-DA-07 Revision D Level 7 Plan	PTW Architects	08/02/2013
A-DA-08 Revision D Level 8 Plan	PTW Architects	08/02/2013
A-DA-09 Revision D Level 9 Plan	PTW Architects	08/02/2013
A-DA-10 Revision D Roof Plant Plan	PTW Architects	08/02/2013
A-DA-11 Revision D Roof Plant Plan	PTW Architects	08/02/2013
A-DA-12 Revision D Roof Plan	PTW Architects	08/02/2013
A-DA-20 Revision D Sections 1	PTW Architects	08/02/2013
A-DA-21 Revision D Sections 2	PTW Architects	08/02/2013
A-DA-30 Revision D Elevation 1 (Draft) Frith Avenue	PTW Architects	08/02/2013
A-DA-31 Revision D Elevation 2 (Draft) Jasmine Rd / Pennant Hills Rd	PTW Architects	08/02/2013



Section 96 Dwg No. A-DA-PS-00 Rev 01 Cover Page and Drawing List	PTW Architects	25/11/15
Section 96 Dwg No. A-DA-PS-01 Rev 01 Survey Plan	PTW Architects	25/11/15
Section 96 Dwg A-DA-PS-02 Rev 01 Stage 2 DA Site Plan (Demolition)	PTW Architects	25/11/15
Section 96 Dwg No. A-DA-PS-07 Tree Assessment Plan	PTW Architects	25/11/15
Section 96 Dwg No. A-DA-PS-08 Rev 01 Axonometric Massing study	PTW Architects	25/11/15
Section 96 Dwg No. A-DA-00 Stage 2 DA Site Plan	PTW Architects	25/11/15
Section 96 Dwg No. A-DA-02 Rev 01 Building A Level 1 Floor Plan	PTW Architects	25/11/2015
Section 96 Dwg A-DA-03 Rev 01 Building A & B Level 2 Floor Plan	PTW Architects	25/11/2015
Section 96 Dwg A-DA-04 Rev 01 Building A, B, C & D Level 3 Floor Plan	PTW Architects	25/11/2015
Section 96 Dwg A-DA-05 Rev 02 Building A, B, C & D Level 4 Floor Plan	PTW Architects	22/06/16
Section 96 Dwg A-DA-06 Building A, B, C & D Level 5 Floor Plan	PTW Architects	22/06/16
Section 96 Dwg A-DA-07 Rev 02 Building A, B, C & D Level 6 Floor Plan	PTW Architects	22/06/16
Section 96 Dwg A-DA-08 Rev 01 Building A, B, C & D Level 7 Floor Plan	PTW Architects	25/11/2015
Section 96 Dwg A-DA-09 Rev 02 Building A, B, C &	PTW Architects	18/04/2016

D Level 9 Floor Plan		
Section 96 Dwg A-DA-10 Building B, C & D Level 9 Floor Plan	PTW Architects	15/04/2016
Section 96 Dwg A-DA-11 Rev 02 Building B, C & D Level 10 Floor Plan	PTW Architects	18/04/2016
Section 96 Dwg A-DA-12 Rev 02 Building B, C & D Level 11 Floor Plan	PTW Architects	18/04/2016
Section 96 Dwg A-DA-200 Rev 02 Street Elevations Sheet 1	PTW Architects	18/04/16
Section 96 Dwg A-DA-201 Rev 02 Street Elevations Sheet 2	PTW Architects	18/04/16
Section 96 Dwg A-DA-202 Rev 02 Building Section Elevations Sheet 1	PTW Architects	18.04.2016
Section 96 Dwg A-DA-205 Rev 02 BBuilding section Elevations Sheet 4	PTW Architects	18.04.2016

12. A minimum of 10% of units are to be affordable housing units pursuant to Clause 45 of State Environmental Planning Policy (Housing for Seniors Living) 2004.

13. **Roads and Maritime Authority**

Post-development stormwater discharge from the site into the RMS drainage system must not exceed the pre-development discharge. Detailed design plans and hydraulic calculations be submitted with a future development application.

14. The developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to RMS for assessment and concurrence prior to the Stage 3 works for Buildings C and D. The developer is to meet the full cost of the assessment by the RMS.

This report would need to address the following key issues:

- a. The impact of excavation /rock anchors on the stability of Pennant Hills Road and detailing how the carriageway would be monitored for settlement.
- b. The impact of the excavation on the structural stability of Pennant Hills Road.

**- END OF CONDITIONS -**

**ADVISORY NOTES**

The following information is provided for your assistance to ensure compliance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 80A of the Act.

**Tree Preservation Order**

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3 metres of the approved building envelope without the prior written consent from Council.

*Note: A tree is defined as a single or multi-trunked wood perennial plant having a height of not less than three (3) metres, and which develops many branches, usually from a distance of not less than one (1) metre from the ground, but excluding any plant which, in its particular location, is a noxious plant declared as such pursuant to the Noxious Weeds Act 1993. This definition of 'tree' includes any and all types of Palm trees.*

*All distances are determined under Australian Standard AS4970-2009 "Protection of Trees on Development Sites".*

Fines may be imposed for non-compliance with Council's *Tree Preservation Order*.

**Asbestos Warning**

Should asbestos or asbestos products be encountered during demolition or construction works you are advised to seek advice and information should be prior to disturbing the material. It is recommended that a contractor holding an asbestos-handling permit (issued by *WorkCover NSW*) be engaged to manage the proper handling of the material. Further information regarding the safe handling and removal of asbestos can be found at:

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

[www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)

[www.adfa.org.au](http://www.adfa.org.au)

[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Alternatively, telephone the *WorkCover* Asbestos and Demolition Team on 8260 5885.