

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2017WES002
<b>DA Number</b>	3/2017
<b>LGA</b>	Cowra Shire Council
<b>Proposed Development</b>	Construction of a SEPP Seniors Living project consisting of 100 detached independent living dwellings, community centre, earthworks, roads and landscaping in a community title subdivision
<b>Street Address</b>	<ul style="list-style-type: none"> <li>Lot 3 DP111554 – Yarrabilly Drive, Cowra</li> <li>Lot 4 DP1092182 – Pack Street, Cowra</li> </ul>
<b>Applicant/Owner</b>	<ul style="list-style-type: none"> <li>Applicant: Southern Rural Holdings Pty Ltd</li> <li>Owner: Cowra Shire Council – owners consent for the lodgment of the DA granted by Council January 2017 via Council Resolution (See Attachment B)</li> </ul>
<b>Date of DA lodgement</b>	11 January 2017
<b>Number of Submissions</b>	Two
<b>Recommendation</b>	Approval subject to conditions
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	Referred to JRPP under cl.4(b)(d) Council owned land with an estimated cost of development of over \$5 million.
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004)</li> <li>State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>Cowra Local Environmental Plan 2012</li> <li>Cowra Development Control Plan 2014</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	A. Context Aerial Photograph Map B. Development Application and Plans C. Contamination Report D. MOU Between Cowra Shire Council & Cowra Pistol Club E. Submissions F. Department of Planning Certificate G. NSW Rural Fire Service Approval H. Recommended Conditions of Consent
<b>Report prepared by</b>	Peфф Planning (consulting to Cowra Shire Council)
<b>Report date</b>	October 2017

### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report? **Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

## **Executive summary**

The purpose of this report is to provide an assessment of Development Application No. 3/2017 (the application) for the consideration of the Western Joint Regional Planning Panel (WJRPP).

The application seeks consent for the following development:

- earthworks to level the land to create a pad site for development
- construction of public and private roads and footpaths
- construction of 100 single storey detached SEPP Seniors Living dwellings
- construction of a community centre
- public domain works including landscaping and lighting
- community title subdivision

The sale of the land from Cowra Shire Council (Council) to the developer (Southern Rural Holdings Pty Ltd) is subject to obtaining consent for this application. Peff Planning has been engaged to assess the application to ensure appropriate independence in accordance with Council's *Code of Planning Practice – Development Applications* (clause 8. Development Applications Involving Council Interests).

The application is referred to the WJRPP under Schedule 4A Development for which regional panels may be authorized to exercise consent authority functions of councils (clause 4(b) and (d) of the *Environmental Planning & Assessment Act 1979* (the Act) as the capital investment value of the project is over \$5 million and Council is the land owner.

The development site is located on the eastern edge of Cowra approximately 2.5 kilometres from the town centre. Cowra Pistol Club is located to the south-east, Cowra Japanese Garden & Cultural Centre is located to the south, Cowra Prisoner of War Camp is located to the north-east and existing urban development to the west.

The development site consists of two lots Lot 4 DP1092182 (Lot 4) where the seniors living development will take place and Lot 3 DP1092182 (Lot 3) which contains an unformed road reserve which will link the development to the existing street network.

Lot 4 is approximately 104.82ha in area, is cleared of native vegetation and used for general farm activities and has a relatively gentle rise to the east where it adjoins Lot 3. Lot 3 is approximately 0.55ha in area. The area of the site the subject to this development application is in relatively close proximity to the boundary of Lot 301, which contains scattered native vegetation and a rocky outcrop. Additionally Lot 4 adjoins the State Listed Heritage area of the Cowra Prisoner of War Camp ground.

Under Cowra Local Environmental Plan 2012 (CLEP 2012) Lot 3 is zoned RE1 Public Recreation. Lot 4 was rezoned to part R1 (General Residential), part R5 (Large Lot Residential) and part RE1 (Public Recreation). The current zoning boundaries are based on a preliminary master plan for the site completed prior to the preparation of the current CLEP 2012. Seniors housing is permissible in the R1 and subject to consent. There is no seniors housing proposed on the RE1 zoned land.

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The main issues in the assessment of the application are:

- impacts of and on adjoining land uses on the proposed development
- contamination
- bushfire
- compliance with the requirements of SEPP (Housing for Seniors or People with a Disability) 2004

The main potential land use conflict is with the site which accommodates Cowra Pistol Club to the south-east. It is considered this can be adequately resolved through conditions of consent to put in place measures prior to construction commencing.

A contamination report has been submitted which confirms that the site is suitable to accommodate the proposed development. (Attachment C.)

In accordance with the integrated development provisions of the Act, approval under the Rural Fires Act 1997 has been obtained from the NSW Rural Fire Service (RFS) and incorporated as conditions of consent. (Attachment G.)

Under clause 6.1 Arrangements for designated State public infrastructure of CLEP 2012 a certificate has been issued by Department of Planning. (Attachment F.)

The application was notified from 24 February 2017 to 17 March 2017 with 2 submissions received. The issues raised in the submissions are not considered significant enough to warrant refusal of the application.

The proposed development has been assessed against the requirements of the Act and is considered satisfactory. On this basis, it is recommended that Development Application No. 3/2017 be approved subject to the conditions contained in Attachment H. of this report.

## **Background**

Lot 4 DP1092182 contains part of a previously decommissioned landfill site owned by Council. Lot 3 DP111554 is a long and narrow parcel of land which is vacant on the southern boundary of Lot 4, was created by a closed road and is owned by Council. Part Lot 6 DP1173226 which does not form part of this application is owned by Crown Land and contains the majority of the previously decommissioned landfill site owned by Council and will contain the access road to the development site.

The sale of the Lot 4 DP1092182 and Lot 3 DP111554 from Cowra Shire Council (Council) to the developer (Southern Rural Holdings Pty Ltd) is subject to obtaining development consent for this application.

The development site was the subject of a rezoning when Cowra Local Environmental Plan 2012 was prepared. The site was previously zoned Rural. Lot 3 was rezoned to RE1 Public Recreation. Lot 4 was rezoned to part R1 -General Residential, part R5 - Large Lot Residential and part RE1 - Public Recreation. The current zoning boundaries are based on a preliminary master planning for the site completed prior to the preparation of the current CLEP 2012.

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To progress CLEP 2012, the Cowra Pistol Club and Council entered into a Memorandum of Understanding (MOU) on 11 September 2011 (Attachment D.). The MOU agreement states, amongst other things the following:

*“(3) Require a developer contribution equivalent to the cost of any works necessary to convert the Pistol Range to a Full Safety Range prior to the release of any Subdivision Certificate for residential development OR set aside funds to convert the Pistol Range to a Full Safety Range.”*

Under the MOU Definitions, the following information is provided:

*“Unless otherwise specified all references to the Safety Zone shall mean the area beyond the fenced area of the Pistol Range that is downrange from the firing points and within the danger area template as prescribed by the NSW Police Firearms Registry.*

*Unless otherwise specified all references to a Full Safety Range shall mean a Limited Danger Area (LDA) or No Danger Area (NDA) range as defined by the NSW Police Firearms Registry.”*

The applicant has held a number of pre-lodgment meetings with Council prior to submitting the application.

The application is referred to the WJRPP under Schedule 4A Development for which regional panels may be authorized to exercise consent authority functions of councils (clause 4(b) and (d)) of the Act as the capital investment value of the project is over \$5 million and Council is the land owner.

## **Proposed development**

The application seeks consent for the following development:

- earthworks to level the land to create a pad site for development
- construction of public and private roads
- construction of 100 single storey detached SEPP Seniors Living dwellings
- construction of a community centre
- public domain works including footpaths, landscaping and lighting
- community title subdivision

Construction of the project will take place in the following stages:

### **Stage 1A**

- construction of a public road and footpath on a current road reserve in Lot 3 DP111554 (this will be subject to conditions of consent requiring a section 138 *Roads Act 1993* approval) to the property boundary of Lot 4 DP1092182
- construction of a private community title internal road, roundabout and footpath in Lot 4 DP1092182
- earthworks to construct the pad for the development
- construction of a community centre
- public domain works
- community title subdivision for 30 lots and the construction of dwellings

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Stage 1B (all to take place in Lot 4 DP1092182)

- construction of a private community title internal road, cul-de-sac head and footpath
- public domain works
- community title subdivision for 32 lots and the construction of dwellings
- upgrading of identified public roads (this will be subject to conditions of consent requiring a section 138 *Roads Act 1993* approval)?

Stage 1C (all to take place in Lot 4 DP1092182)

- construction of a private community title internal road
- public domain works
- community title subdivision for 48 lots and the construction of dwellings

It is noted that the application is not seeking approval as a staged development but rather the development will be constructed in 3 stages.

Owners consent for the lodgment of the application was granted by Cowra Council via the following resolution on the 23 January 2017:

*17/17 Moved Cr BE Miller, Seconded Cr RJ Walsh:*

1. *That the report from the General Manager be noted.*
2. *That owners consent for Development Application No. 03/2017 for the purpose of Community Title Seniors Independent Living development with 100 detached 2 bedroom dwellings and a community building on Lot 4 DP1092182 and Lot 3 DP111554 be granted.*

## **Assessment of the proposed development**

The following provides an assessment of the application against the requirements of section 79C of the Act.

*(1) Matters for consideration—general In determining a development 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 provisions of:*

*(i) any environmental planning instrument, and*

The following provides an assessment of the proposed development against the relevant environmental planning instruments.

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

The following matters are required for consideration under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004:

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## Chapter 1 Preliminary

### 1 Name of Policy

This Policy is *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

### 2 Aims of Policy

(1) This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

(2) These aims will be achieved by:

- (a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and
- (b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and
- (c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.

### Comment

It is considered the aims of the SEPP are satisfied in respect to providing housing choice for an aging population which is in close proximity to existing infrastructure and services (and where a community centre will be provided on site as part of the development), and is of an appropriate design.

## Chapter 3 Development for seniors housing

### Part 1 General

#### 14 Objective of Chapter

The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.

#### 15 What Chapter does

This Chapter allows the following development despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy:

- (a) development on land zoned primarily for urban purposes for the purpose of any form of seniors housing, and
- (b) development on land that adjoins land zoned primarily for urban purposes for the purpose of any form of seniors housing consisting of a hostel, a residential care facility or serviced self-care housing.

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## Comment

The intent of Chapter 3 of the SEPP is to allow seniors housing development to take place in locations where another environmental planning instrument (e.g. a local environmental plan) may not permit it. In this instance, development for the purpose of seniors housing is permissible in the R1 General Residential Zone with consent under CLEP 2012. Chapter 3 of the SEPP is therefore not relied upon and does not apply in the assessment of this development application.

### **Schedule 3 Standards concerning accessibility and useability for hostels and self-contained dwellings** **(Clause 41 (1))**

#### Part 1 Standards applying to hostels and self-contained dwellings

##### 1 Application of standards in this Part

The standards set out in this Part apply to any seniors housing that consists of hostels or self-contained dwellings.

##### 2 Siting standards

###### (1) Wheelchair access

If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.

###### (2) If the whole of the site does not have a gradient of less than 1:10:

- (a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and
- (b) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway that is accessible to all residents.

###### Note.

For example, if 70% of the site has a gradient of less than 1:10, then 70% of the dwellings must have wheelchair access as required by this subclause. If more than 50% of the site has a gradient greater than 1:10, development for the purposes of seniors housing is likely to be unable to meet these requirements.

###### (3) Common areas

Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.

##### 3 Security

###### Pathway lighting:

- (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and

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(b) must provide at least 20 lux at ground level.

#### 4 Letterboxes

Letterboxes:

- (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel (within the meaning of AS 1428.1), and
- (b) must be lockable, and
- (c) must be located together in a central location adjacent to the street entry or, in the case of self-contained dwellings, must be located together in one or more central locations adjacent to the street entry.

#### 5 Private car accommodation

If car parking (not being car parking for employees) is provided:

- (a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and
- (b) 5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and
- (c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.

#### 6 Accessible entry

Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with clauses 4.3.1 and 4.3.2 of AS 4299.

#### 7 Interior: general

- (1) Internal doorways must have a minimum clear opening that complies with AS 1428.1.
- (2) Internal corridors must have a minimum unobstructed width of 1,000 millimetres.
- (3) Circulation space at approaches to internal doorways must comply with AS 1428.1.

#### 8 Bedroom

At least one bedroom within each dwelling must have:

- (a) an area sufficient to accommodate a wardrobe and a bed sized as follows:
  - (i) in the case of a dwelling in a hostel—a single-size bed,
  - (ii) in the case of a self-contained dwelling—a queen-size bed, and
- (b) a clear area for the bed of at least:
  - (i) 1,200 millimetres wide at the foot of the bed, and
  - (ii) 1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other obstruction, and
- (c) 2 double general power outlets on the wall where the head of the bed is likely to be, and
- (d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be, and
- (e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and
- (f) wiring to allow a potential illumination level of at least 300 lux.

#### 9 Bathroom

(1) At least one bathroom within a dwelling must be on the ground (or main) floor and have the following facilities arranged within an area that provides for circulation space for sanitary facilities in accordance with AS 1428.1:

- (a) a slip-resistant floor surface,



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- (b) a washbasin with plumbing that would allow, either immediately or in the future, clearances that comply with AS 1428.1,
  - (c) a shower that complies with AS 1428.1, except that the following must be accommodated either immediately or in the future:
    - (i) a grab rail,
    - (ii) portable shower head,
    - (iii) folding seat,
  - (d) a wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it,
  - (e) a double general power outlet beside the mirror.
- (2) Subclause (1) (c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.

#### 10 Toilet

A dwelling must have at least one toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.

#### 11 Surface finishes

Balconies and external paved areas must have slip-resistant surfaces.

Note.

Advice regarding finishes may be obtained from AS 1428.1.

#### 12 Door hardware

Door handles and hardware for all doors (including entry doors and other external doors) must be provided in accordance with AS 4299.

#### 13 Ancillary items

Switches and power points must be provided in accordance with AS 4299.

### Part 2 Additional standards for self-contained dwellings

#### 14 Application of standards in this Part

The standards set out in this Part apply in addition to the standards set out in Part 1 to any seniors housing consisting of self-contained dwellings.

#### 15 Living room and dining room

- (1) A living room in a self-contained dwelling must have:
  - (a) a circulation space in accordance with clause 4.7.1 of AS 4299, and
  - (b) a telephone adjacent to a general power outlet.
- (2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.

#### 16 Kitchen

A kitchen in a self-contained dwelling must have:

- (a) a circulation space in accordance with clause 4.5.2 of AS 4299, and
- (b) a circulation space at door approaches that complies with AS 1428.1, and
- (c) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299:
  - (i) benches that include at least one work surface at least 800 millimetres in length that comply with clause 4.5.5 (a),
  - (ii) a tap set (see clause 4.5.6),

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- (iii) cooktops (see clause 4.5.7), except that an isolating switch must be included,
  - (iv) an oven (see clause 4.5.8), and
  - (d) “D” pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and
  - (e) general power outlets:
    - (i) at least one of which is a double general power outlet within 300 millimetres of the front of a work surface, and
    - (ii) one of which is provided for a refrigerator in such a position as to be easily accessible after the refrigerator is installed.

#### 17 Access to kitchen, main bedroom, bathroom and toilet

In a multi-storey self-contained dwelling, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.

#### 18 Lifts in multi-storey buildings

In a multi-storey building containing separate self-contained dwellings on different storeys, lift access must be provided to dwellings above the ground level of the building by way of a lift complying with clause E3.6 of the *Building Code of Australia*.

#### 19 Laundry

A self-contained dwelling must have a laundry that has:

- (a) a circulation space at door approaches that complies with AS 1428.1, and
- (b) provision for the installation of an automatic washing machine and a clothes dryer, and
- (c) a clear space in front of appliances of at least 1,300 millimetres, and
- (d) a slip-resistant floor surface, and
- (e) an accessible path of travel to any clothes line provided in relation to the dwelling.

#### 20 Storage for linen

A self-contained dwelling must be provided with a linen storage in accordance with clause 4.11.5 of AS 4299.

#### 21 Garbage

A garbage storage area must be provided in an accessible location.

### Comment

Those requirements which apply to this development will be addressed in detail as part of the construction certificate documents. A condition of consent has been imposed to ensure this.

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

The purpose of State Environmental Planning Policy No. 55 – Remediation of Land is to ensure planning authorities consider in the assessment of a rezoning or development application former uses of the land and the potential for contamination to have occurred.

The applicant provided a copy of a Report on Preliminary Site Investigation with Limited Sampling for the proposed Entry Road and the Report on Preliminary Site Investigation with limited Sampling for the Proposed Residential Subdivision prepared by Douglas Partners and a Geotechnical Report provided by Douglas Partners. The Preliminary Reports recommend further testing of the land in relation to the location of the access road over the former landfill site.

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The former landfill was established between 1964 and 1973. Prior to the site being used for a landfill site (now closed) the site was used as a night soil and rubbish depot from the mid 1950's.

As a result of the Douglas Partners Preliminary Site Investigations a further report was commissioned as part of this assessment of the application. Landfill gas and Groundwater Investigation Report was provided by Envirowest Consulting, which indicates that the proposed location of the seniors village is suitable for the proposed development and considered satisfactory under SEPP 55. Additionally, Council is commissioning an Asbestos Management Plan for the landfill site in relation to the Douglas Partners Report.

Recommendations contained in the reports have been incorporated as conditions of consent including the Asbestos Management Plan (all Reports are at Attachment C).

## **Cowra Local Environmental Plan 2012 (CLEP 2012)**

### **1.2 Aims of Plan**

*(1) This Plan aims to make local environmental planning provisions for land in Cowra in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*

*(2) The particular aims of this Plan are as follows:*

*(a) to provide for a range of development opportunities that contribute to the social, economic and environmental resources of Cowra in a manner that allows present and future generations to meet their needs by implementing the principles of ecologically sustainable development,*

*(b) to facilitate and encourage sustainable growth and development that:*

*(i) protects, enhances and conserves agricultural land and the contributions that agriculture makes to the regional economy, and*

*(ii) provides a mix of residential housing opportunities to meet the needs of the wider community, and*

*(iii) contributes to industrial employment opportunities in Cowra, and*

*(iv) ensures that Cowra central business district remains the primary commercial centre for the wider region, and*

*(v) provides high quality open space to meet a wide range of active and passive recreational needs, and*

*(vi) provides for rural residential living opportunities in appropriately serviced locations close to the Cowra township, and*

*(vii) allows for the orderly growth of land uses, while minimising conflict between land uses within the zone and land uses within adjoining zones, in a manner that minimises adverse environmental impacts, and*

*(viii) allows for the protection and enhancement of places and buildings of environmental, archaeological, cultural or heritage significance, including relics and Aboriginal places of heritage significance, and*

*(ix) protects and enhances environmentally sensitive natural resources.*

### **Comment**

It is considered the proposed development is consistent with the relevant aims of the Plan in

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terms of providing housing choice/mix to enable the community to age in place, that conflict with adjoining land uses can be appropriately managed, and that the selected site represents orderly growth within the urban footprint of Cowra.

## **Part 2 Permitted or prohibited development**

Under CLEP 2012 Lot 4 DP1092182 is zoned R1 General Residential.

### *Land Use Table*

#### *Zone R1 General Residential*

##### *1 Objectives of zone*

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide attractive, affordable, well located and market-responsive residential land.*
- *To ensure that any non-residential land uses permitted within the zone are compatible with the amenity of the area.*
- *To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities.*
- *To maximise public transport patronage and encourage walking and cycling.*

##### *2 Permitted without consent*

*Environmental protection works; Home occupations*

##### *3 Permitted with consent*

*Attached dwellings; Boarding houses; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Food and drink premises; Group homes; Home industries; Hostels; Kiosks; Multi dwelling housing; Neighbourhood shops; Places of public worship; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; Any other development not specified in item 2 or 4.*

##### *4 Prohibited*

*Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Car parks; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Extractive industries; Farm buildings; Farm stay accommodation; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Public administration buildings; Recreation facilities (major); Research stations; Restricted premises; Rural industries; Rural workers' dwellings; Service stations; Sewage treatment plants; Sex services premises; Signage; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste or resource management facilities; Water treatment facilities; Wharf or boating facilities; Wholesale supplies*

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## Comment

Under CLEP 2012 the proposed development is characterised as seniors housing, which is defined in the dictionary as:

*seniors housing means a building or place that is:*

- (a) a residential care facility, or*
- (b) a hostel within the meaning of clause 12 of [State Environmental Planning Policy \(Housing for Seniors or People with a Disability\) 2004](#), or*
- (c) a group of self-contained dwellings, or*
- (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c),*  
*and that is, or is intended to be, used permanently for:*
- (e) seniors or people who have a disability, or*
- (f) people who live in the same household with seniors or people who have a disability, or*
- (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,*  
*but does not include a hospital.*

*Note.*

*Seniors housing is a type of residential accommodation—see the definition of that term in this Dictionary.*

The application seeks development consent for seniors housing self-contained dwellings, which is permissible in the zone subject to consent.

It is considered the proposed development is consistent with the objectives of the zone in terms of providing a form of housing which will enable people to age in place in an attractive, community focused environment.

### **Under CLEP 2012 Lot 3 DP111554 is zoned RE1 Public Recreation.**

#### *Zone RE1 Public Recreation*

##### *1 Objectives of zone*

- To enable land to be used for public open space or recreational purposes.*
- To provide a range of recreational settings and activities and compatible land uses.*
- To protect and enhance the natural environment for recreational purposes.*
- To maximise public transport patronage and encourage walking and cycling.*

##### *2 Permitted without consent*

*Environmental protection works.*

##### *3 Permitted with consent*

*Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Caravan parks; Charter and tourism boating facilities; Community facilities; Environmental facilities; Information and education facilities; Jetties; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Roads; Water recreation structures; Water recycling facilities; Water supply systems.*

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#### 4 Prohibited

*Water treatment facilities; Any other development not specified in item 2 or 3.*

#### **Comment**

Under CLEP 2012 this element of the proposed development is characterised as a road, which is defined in the dictionary as:

*road means a public road or a private road within the meaning of the Roads Act 1993, and includes a classified road.*

The application seeks development consent for the construction of a road (and other public domain works), which is permissible in the zone subject to consent.

It is considered the proposed development is not inconsistent with the objectives of the zone, and with the construction of a footpath will encourage future residents to walk.

#### **4.1AA Minimum subdivision lot size for community title schemes**

*(1) The objectives of this clause are as follows:*

*(a) to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.*

*(2) This clause applies to a subdivision (being a subdivision that requires development consent) under the [Community Land Development Act 1989](#) of land in any of the following zones:*

*(a) Zone RU1 Primary Production,*

*(b) Zone RU4 Primary Production Small Lots,*

*(c) Zone R1 General Residential,*

*(d) Zone R5 Large Lot Residential,*

*(e) Zone E3 Environmental Management.*

*(3) The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the [Community Land Development Act 1989](#)) is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*

#### **Comment**

The proposed development consists of a community title subdivision. The minimum lot size requirements are not applied to this development application on the basis of the inconsistency between the aims of the SEPP (Housing for Seniors or People with a Disability) 2004 and CLEP 2012 and the applicable of clause 1.9 Application of SEPPs of CLEP 2012 in such circumstances.

### **Part 6 Urban release areas**

#### **6.1 Arrangements for designated State public infrastructure**

*(1) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is*

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*developed intensively for urban purposes.*

*(2) Development consent must not be granted for the subdivision of land in an urban release area unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that land.*

*(3) Subclause (2) does not apply to:*

*(a) any lot identified in the certificate as a residue lot, or*

*(b) any lot to be created by a subdivision of land that was the subject of a previous development consent granted in accordance with this clause, or*

*(c) any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose, or*

*(d) a subdivision for the purpose only of rectifying an encroachment on any existing lot.*

*(4) This clause does not apply to land in an urban release area if all or any part of the land is in a special contributions area (as defined by section 93C of the Act).*

#### **Comment**

The subject site is identified as being within the Yarrabilly Urban Release Area and therefore a certificate issued by the Director General of the Department of Planning is required prior to the determination of a development application. A certificate has been issued by the Department of Planning to satisfy this clause. (Attachment F.)

#### **6.2 Public utility infrastructure**

*(1) Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.*

*(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.*

#### **Comment**

Council has indicated that they are satisfied that appropriate arrangements are in place for the provision of infrastructure to service the development.

#### **6.3 Development control plan**

*(1) The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.*

*(2) Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.*

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*(3) The development control plan must provide for all of the following:*

- (a) a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,*
- (b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
- (c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
- (d) a network of active and passive recreation areas,*
- (e) stormwater and water quality management controls,*
- (f) amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,*
- (g) detailed urban design controls for significant development sites,*
- (h) measures to encourage higher density living around transport, open space and service nodes,*
- (i) measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
- (j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*

*(4) Subclause (2) does not apply to development for any of the following purposes:*

- (a) a subdivision for the purpose of a realignment of boundaries that does not create additional lots,*
- (b) a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environment protection purpose,*
- (c) a subdivision of land in a zone in which the erection of structures is prohibited,*
- (d) proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.*

## **Comment**

The Yarrabilly Urban Release Area is included in the Cowra Development Control Plan 2014 and is addressed in the relevant section of this report.

### **6.4 Subdivision of land at Yarrabilly**

*(1) The objectives of this clause are as follows:*

- (a) to maintain appropriate levels of public safety and amenity when developing land near the Cowra Pistol Club,*
- (b) to reduce land use conflict between the Cowra Pistol Club and land adjacent to the Cowra Pistol Club by ensuring that certain works are undertaken prior to developing land near the Cowra Pistol Club.*

*(2) This clause applies to the land identified as “Yarrabilly” on the [Urban Release Area Map](#).*

*(3) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:*

- (a) the location and operation of the Cowra Pistol Club will not adversely affect the safe occupation of the land, and*



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*(b) the subdivision of the land is designed to minimise any land use conflict with, or adverse impact on, the operation of the Cowra Pistol Club.*

## **Comment**

The subject site adjoins land occupied by the Cowra Pistol Club. The Pistol Club sits to the south east of the site behind a significant ridge line some 40 metres below the site. The area of the site the subject of this development application is located at its furthest point from the Club. A MOU was entered into between Council and the Club at the time the site was rezoned to permit residential development. It is considered appropriate measures can be put in place utilising the slope of the land and other practices which will enable the Club to continue operating at its current location but reduce the risk to the residential development. Conditions have been incorporated to achieve this and have sign off from the appropriate authority in NSW Police. It is recommended that all works are completed at full cost to the developer and signed off prior to the issue of a construction certificate.

### **7.1 Earthworks**

*(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*

*(2) Development consent is required for earthworks unless:*

*(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or*

*(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.*

*(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:*

*(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

*(b) the effect of the development on the likely future use or redevelopment of the land,*

*(c) the quality of the fill or the soil to be excavated, or both,*

*(d) the effect of the development on the existing and likely amenity of adjoining properties,*

*(e) the source of any fill material and the destination of any excavated material,*

*(f) the likelihood of disturbing relics,*

*(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

*Note.*

*The [National Parks and Wildlife Act 1974](#), particularly section 86, deals with harming Aboriginal objects.*

## **Comment**

The earthworks required to accommodate the development are considered satisfactory and will not have an adverse impact on the drainage patterns of the land or adjoining sites. An Aboriginal archaeological assessment has been undertaken which indicates that it is unlikely that any sensitive artefacts will be found during construction.

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Conditions of consent are incorporated to ensure:

- in the event of an Aboriginal or European artefact being found during construction appropriate management measures are in place;
- geotechnical engineering outcomes are achieved in accordance with Australian standards;
- any hazardous materials are managed effectively and disposed of at a licensed premise;
- any surplus fill is disposed at a licensed premise;
- imported fill is clean and sourced from an appropriate location;
- sediment and erosion control measures are in place and managed appropriately during construction;
- dust and water runoff is appropriately managed.

## 7.8 Essential services

*Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:*

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

### Comment

Council has indicated that adequate arrangements are in place for the provision of water and sewer to service the development. The applicant has indicated that appropriate arrangements will be made with the electricity provider prior to each stage being developed.

Council's engineers have confirmed that the proposed stormwater system is satisfactory. Vehicle access to the site is via a legally created unformed road reserve which will require contouring however is considered adequate in terms of width and grade.

Cowra District Hospital is located within close proximity of the development and will provide a range of health services should they be required.

*(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

### Comment

No proposed instruments are required to be considered.

*(iii) any development control plan, and*

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## **Comment**

The following provides an assessment of the proposed development against the relevant sections of Cowra Development Control Plan 2014 (CDCP 2014).

### **Part D Subdivision Code**

It is considered the development satisfies the community title requirements of the DCP. A condition will be imposed requiring each lot to have a separate water and sewer metre. The road layout, public domain outcomes and boundary design interface treatment is considered satisfactory.

### **Part E Residential**

Part E does not contain any specific requirements for seniors housing, which therefore requires a merit assessment to be undertaken.

The development consists of single storey detached project home inspired brick/tile dwellings with garages on community title lots. Internally, the floor plan responds to the needs of residents and is considered satisfactory (room sizes are appropriate and the connection between inside and outside living areas has been considered).

Private open space areas are relatively small which minimises maintenance, and are predominantly located at the front of lots to achieve social interaction between residents. Solar access into living areas, building separation and acoustic considerations are adequate.

The community centre element of the development is in a central location to provide a focal meeting point for residents, and architecturally follows the theme in terms of materials and colours.

The development is considered satisfactory in terms of providing an appropriate level of amenity to residents.

### **Part R1 Yarrabilly Urban Release Area**

The layout of the proposed development is generally consistent with the treatment of this area of the site shown on the Master Plan in the DCP, in terms of the road network the location of a form of medium density housing and a community centre. In this regard the proposed development is considered satisfactory.

As discussed in CDCP 2014, it is recommended Council review and update this Part prior to any further development taking place to ensure appropriate outcomes are achieved.

*(iia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and  
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

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**Comment**

No planning agreement or draft planning agreement is required to be considered.

*(v) any coastal zone management plan (within the meaning of the [Coastal Protection Act 1979](#)), that apply to the land to which the development application relates,*

**Comment**

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,*

**Comment**

Land use conflict with the adjoining Cowra Pistol Club has been identified previously at the rezoning stage with a MOU entered into with Council. It is considered an adequate solution can be achieved to mitigate this issue, however this needs to be undertaken prior to construction work commencing and will require sign off by NSW Police.

It is not considered the development will have an adverse impact on the adjoining Japanese Gardens or Cowra POW Camp given its siting, design and the topography of the area.

Flora and fauna, and Aboriginal archeological reports have been considered in the assessment of the application which confirms that there are no significant issues.

Adequate capacity exists within the local road network to accommodate the additional traffic generated by the development. Council's engineers are satisfied that the development's stormwater will be appropriately managed and will not have an adverse impact on adjoining properties.

Given the design response of the development (siting, materials and colours), it is not considered that it will have an adverse visual impact on the locality.

It is envisaged the development will have a positive social impact in providing appropriate housing opportunities to enable people to age in place. The development will also have positive economic impact for the local construction industry and once operational in the health and property management sectors.

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

**Comment**

Flora and fauna, and Aboriginal archaeological reports have been considered in the assessment of the application which confirms that there are no significant issues.

Vehicle and pedestrian access to the site is via a public road which will require upgrading

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however is adequate in terms of width and grade. Given the location of the site on Cowra's urban edge infrastructure (water, sewer and electricity) can be connected to service the development.

The site is within close proximity of Cowra town centre which provides a range of commercial and entertainment opportunities, and Cowra District Hospital.

Given the previous use of the site for landfill, a contamination report has been prepared which confirms the land can be developed. Re-contouring of the subject area of the site will be required to achieve appropriate grades to accommodate the development, however this is considered satisfactory in terms of stormwater management and the length and height of retaining walls.

The land is mapped as being bushfire prone. In accordance with the integrated development requirements of the Act, the application was referred to the NSW RFS and a section 100B approval issued.

It is considered the development will not have a significant adverse impact and is suitable to accommodate the proposed development.

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

#### **Comment**

The application was referred to the NSW RFS under the integrated development provisions of the Act and has received General Terms of Approval (GTAs).

The application was placed on public exhibition from 26 February 2017 to 17 March 2017 with 2 submissions received. (Attachment E) Issues raised in the submissions are responded to in the following.

#### **Submission 1.**

A submission was received from Cowra Pistol Club which objected to the proposed development on the grounds that it would compromise its ability to operate as it currently does.

#### **Comment**

The Club signed a MOU with Council as part of the rezoning process. It is considered a solution exists (e.g. earthen mound between the Club's land and the development site) which will provide appropriate levels of safety. A condition has been imposed requiring such works to be completed and signed off by NSW Police prior to any construction works commencing.

#### **Submission 2.**

A submission was received from a member of the public who raised the following issues:

a). An opportunity exists to achieve a sense of place (a Peace Precinct located between the Japanese Gardens and former POW Camp) by enhancing the public domain as part of this project and including public artwork.

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**Comment**

Whilst the idea has merit and should be explored further, the alignment proposed as part of the development application is consistent with the dedicated road reserve in the deposited plan.

b). Use of grey water isn't being employed as part of managing the water cycle.

**Comment**

Council is satisfied with the water management practices proposed.

c). Engineering plans were not placed on public exhibition.

**Comment**

It is not common practice to place engineering plans on public exhibition for a development application. Information that was on public exhibition was considered satisfactory in enabling members of the public to obtain an understanding of the project and to satisfy legal requirements.

d). Was the 2016 Yarrabilly Masterplan referenced in the development application placed on public exhibition?

**Comment**

The masterplan referenced is a guiding document to assist in obtaining an understanding of how the land may be developed. It is recommended that as part of DCP review this be explored further.

*(e) the public interest.*

**Comment**

It is considered that the proposed development does not compromise the public interest. The development will provide positive social outcomes in offering additional housing options for people looking to downsize within the current population (retention of older residents within the community) or for those looking to move to Cowra for this form of housing.

Satisfactory solutions can be achieved to mitigate the land use conflict between the proposed development and Cowra Pistol Club, however this is a priority and should be resolved in terms of design, construction and sign off of adequacy prior to construction works commencing.

*Note.*

*See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.*

*Note.*

*The consent authority is not required to take into consideration the likely impact of the*

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development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the [Threatened Species Conservation Act 1995](#)), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the [Threatened Species Conservation Act 1995](#).

(2) *Compliance with non-discretionary development standards—development other than complying development* If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
  - (b) must not refuse the application on the ground that the development does not comply with those standards, and
  - (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,
- and the discretion of the consent authority under this section and section 80 is limited accordingly.

(3) *If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:*

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

*Note.*

The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

(3A) *Development control plans* If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, standards include performance criteria.

(4) *Consent where an accreditation is in force* A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.

(5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) *Definitions* In this section:

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*(a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and*

*(b) non-discretionary development standards means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.*

## **Conclusion**

The application was notified for a period of 21 days from 24 February 2017 to 17 March 2017 with 2 submissions received. The issues raised have been addressed in the report and are not considered significant enough to warrant refusal of the application.

The application is integrated development (special purpose development under the *Rural Fires Act 1997*). The NSW Rural Fire Service (RFS) has issued General Terms of Approval (GTAs) which have been incorporated into the conditions of consent.

A site investigation report confirms that the site can be developed for the proposed development.

It is considered that the land use conflict issue with Cowra Pistol Club can be adequately resolved; however this is a priority and needs to take place prior to construction work commencing (design, construction and sign off).

The development will have positive social and economic outcomes in terms of providing opportunities for people to age in place, and providing construction, health and maintenance jobs.

The application has been assessed against the requirements of section 79C of the Act and other relevant policies and is considered satisfactory.

## **Recommendation**

It is recommended that Development Application No. 3/2017 be approved subject to the conditions contained in Attachment H of this report.