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| **COUNCIL ASSESSMENT REPORT**  HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL | |

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| PANEL REFERENCE & DA NUMBER | PPSHCC-80  DA/202/2016/A |
| PROPOSAL | Residential aged care facility - modification |
| ADDRESS | 64, 66, 68, 70, 72 Warners Bay Road, Warners Bay  Lot 11 DP 656806 and Lots 1, 2, 3, 4 DP 515152 |
| APPLICANT | Knowles Group |
| OWNER | Arcare Pty Ltd |
| DA LODGEMENT DATE | 17 June 2021 |
| APPLICATION TYPE | Modification 4.55(2) – amended conditions of consent imposed by Panel |
| REGIONALLY SIGNIFICANT CRITERIA | The original application, PPS-2016HCC014, was referred to the Panel as it satisfied the regional development criteria, being general development over $20 million.  The subject modification application is referred to the Panel in accordance with section 123BA of the Environmental Planning and Assessment Regulation, 2000. |
| CIV | $17,987,310 (excluding GST) |
| CLAUSE 4.6 REQUESTS | N/A |
| KEY SEPP/LEP | *State Environmental Planning Policy No. 55 – Remediation of Land*  *State Environmental Planning Policy No. 64 – Advertising and Signage*  *State Environmental Planning Policy (State and Regional Development) 2011*  *State Environmental Planning Policy (Infrastructure) 2007*  *State Environmental Planning Policy (Coastal Management) 2018*  *State Environmental Planning Policy (Koala Habitat Protection) 2021*  *Lake Macquarie Local Environmental Plan 2014* |
| TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS | Two unique submissions  Key issues:   * Increased traffic * Light spill impacts to adjoining properties * Landscaping and fencing to interface with adjoining properties |
| DOCUMENTS SUBMITTED FOR CONSIDERATION | **Plans**   * Amended architectural plans (August 2021) * Architectural plans (June 2021) * Landscape plans (August 2021) * Amended lower floor sedimentation and erosion control plan (August 2021) * Civil plans (June 2021) * Proposed signage (June 2021)   **Reports and documentation**   * Response letter RFI (4.55 analysis) * Reasons for decision – DA/202/2016 * Access report (June 2021) * Acoustic report (August 2021) * Arborist report (June 2021) * BCA Report (June 2021) * Flooding report (June 2021) * Odour assessment report (August 2021) * Operational waste management plan (June 2021) * Transport impact assessment (June 2021)   **Attachments**   * Attachment A: Draft conditions of consent |
| SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24) | N/A |
| RECOMMENDATION | Approval |
| DRAFT CONDITIONS TO APPLICANT | Yes |
| SCHEDULED MEETING DATE | 11 November 2021 |
| PREPARED BY | Amy Regado, Section Manager Development |
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| DATE OF REPORT | 4 November 2021 |

**EXECUTIVE SUMMARY**

Consent is sought for a modifications to an approved Seniors Housing (residential care facility) at 64, 66, 68, 70, 72 Warners Bay Road, Warners Bay.

The application is referred to the Hunter and Central Coast Regional Planning Panel as the original application was development over $20 million and the application seeks to modify conditions imposed by the panel.

The application was exhibited from 17 June to 15 July 2021 and two submissions in objection were received.

A kick-off briefing was held on 14 July 2021, and briefing held on 15 September 2021 with the Hunter and Central Coast Regional Planning Panel.

General Terms of Approval (GTAs) have been provided by the Natural Resource Access Regulator as integrated development under the *Water Management Act 2000*. The application was referred to Subsidence Advisory NSW who rejected the referral as the land is no longer in a mine subsidence district.

There were no concurrence requirements from agencies for the proposal.

Ausgrid and Transport for NSW were notified of the application. Ausgrid confirmed their support for the proposal. Transport for NSW rejected the referral as the development is not traffic generating development nor located on a classified road.

The development has been assessed to be compliant with applicable State, Regional and Local Environmental Planning Instruments and Policies, including:

* *Environmental Planning and Assessment Act 1979*
* *Environmental Planning and Assessment Regulation 2000*
* *State Environmental Planning Policy No. 55 – Remediation of Land*
* *State Environmental Planning Policy No. 64 – Advertising and Signage*
* *State Environmental Planning Policy (State and Regional Development)*
* *State Environmental Planning Policy (Infrastructure) 2007*
* *State Environmental Planning Policy (Coastal Management) 2018*
* *Lake Macquarie Local Environmental Plan 2014*
* *State Environmental Planning Policy (Koala Habitat Protection) 2021*
* *Lake Macquarie Development Control Plan 2014*

The proposal is consistent with the various provisions of the planning controls including:

* The site is not contaminated and remains suitable for its intended purpose.
* The development does not adversely impact upon any ecological features/attributes of the site, including flora and fauna associated with the riparian zone at the rear of the site.
* The development achieves appropriate flooding outcomes and has demonstrated the development is compatible with the flooding site’s flooding hazard, will not be adversely impacted during a flood event, and does not impact adjoining lands during a flood event.
* The development maintains appropriate visual and acoustic privacy outcomes.
* One additional tree will be removed, and complementary landscaping for amenity and visual privacy will be provided throughout the development.
* The development is consistent with the zone objectives.
* The development maintains a building height variations which is considered to be appropriate for its location and be of high quality urban form.
* The development achieves appropriate streetscape and built form outcomes and reflects a residential character that compliments existing surrounding residential development.

The modified development is considered to be substantially the same development as originally approved. The application has demonstrated qualitatively and quantitatively the proposal maintains and/or improves elements of the approved development.

The reasons for the previous decision by the (then) Joint Regional Planning Panel have been addressed, with the proposal remaining consistent with these reasons.

Following a detailed assessment of the proposal the development is considered to be in the public interest and worthy of approval subject to modified conditions contained in Attachment A.

1. **THE SITE AND LOCALITY**

The site comprises five lots having frontage to Warners Bay Road of 80.52m, and a total site area of 15,307m².

The site is zoned R2 – Low Density Residential for the lots adjacent to Warners Bay Road and RU4 – Primary Production Small Lots for the larger rear lot.

The land is vacant of built form, with vegetation along the western and southern boundaries. The south boundary comprises South Creek and a riparian area. The land slopes down gently from Warners Bay Road towards South Creek.

A 5.7m wide drainage easement and overland flow path is located along the western boundary of the site.

The locality comprises low density residential development to the west and north (across Warners Bay Rd). Seniors housing development (Lymington Village) is located adjacent to the eastern side boundary.

Warners Bay town centre is located approximately 1.4km (by road) to the north-west of the site.



**Figure 1: Location map including zoning overlay and bus stops**

1. **THE PROPOSAL AND BACKGROUND** 
   1. **The proposal**

The proposal seeks consent for modifications to an approved Seniors Housing (residential care facility).

Specifically, the proposal involves:

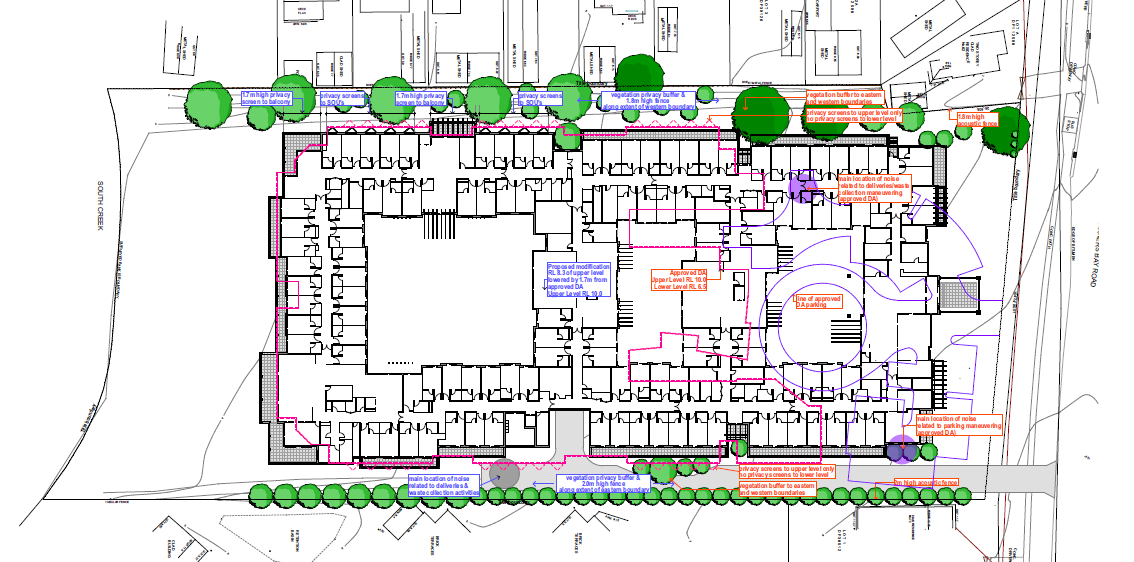
* amendment from two levels of residential rooms to a single level of rooms.
* reduction from 144 beds (including 36 beds for people with dementia) to 110 beds (including 16 beds for people with dementia beds).
* reduction in height of building from 10.5m to 10.1m.
* increased height of residential finished floor levels from 6.5m AHD to 8.3m AHD to accommodate for updated flood study.
* increase to side and rear boundaries.
* reduction to front setback from 34m to 12.
* replacement of at-grade parking within the front setback, to primarily within the new basement level parking beneath the building.
* increase car parking provision from 36 spaces to 44 spaces.
* amended vehicular access arrangements from single access, to combined eastern driveway and separate entry/exit for porte-cochere.
* new driveway along south-eastern boundary providing access to the undercroft/basement car parking area and back of house functions.
* amended stormwater design and landscape design, including removal of one additional tree.
* removal of the health hub component of the approved development.
* retention of on-site kitchen and laundry facilities.
* lot consolidation.

The primary reason behind the modification relates to a change in operators of the development from Bupa to Arcare, and amendments to the building to cater for the operational requirements of Arcare.

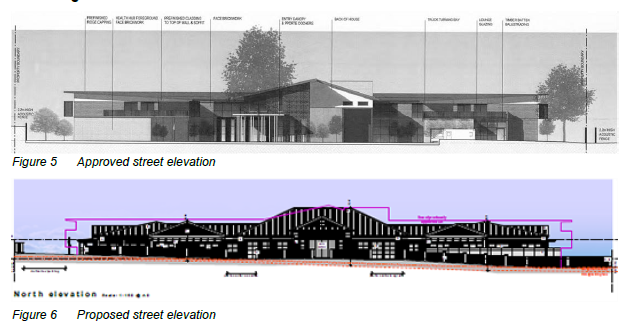
The Capital Investment Value (CIV) of the original development was $26,757,000 (excluding GST) and the CIV for the modified development is $19,786,040 (excluding GST). The development is Integrated Development in relation to the *Water Management Act 2000*.

**Table 1: Development data**

|  |  |
| --- | --- |
| **Control** | **Proposal** |
| Site area | 15,307m2 |
| GFA | 6,566m2 |
| Clause 4.6 Requests | No, however building height variation |
| No. of beds | 110 |
| Max height | 10.1m |
| Landscaped area | 5,065m2 |
| Car parking spaces | 44 spaces |



**Figure 2: Proposed floor plan with original approved plans shown**

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**Figure 3 – Approved and proposed street elevations**

* 1. **Background**

DA/202/2016 was approved by the Hunter and Central Coast Joint Regional Planning Panel on 10 January 2017 for a $26 million 144 bed residential aged care facility at the site. At the time, development valued over $20 million was classified as regionally significant development. The development consent has been acted upon with demolition works being undertaken as per the original consent.

A pre-lodgement meeting was held prior to the lodgement of the application on 16 March 2021 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

* Modification pathway
* Vehicle access and car parking
* Interface with adjoining development
* Streetscape and landscaping
* Updated/revised documentation required.

The development application was lodged on 17 June 2021. A chronology of the development application since lodgement is outlined in Table 2.

**Table 2: Chronology of the DA**

|  |  |
| --- | --- |
| **Date** | **Event** |
| 17 June 2021 | Lodgement of application |
| 17 June – 15 July 2021 | Exhibition of the application |
| June 2021 | DA referred to external agencies:   * Ausgrid * RMS * NRAR * SA NSW |
| June 2021 | DA referred to Council officers. |
| 14 July 2021 | Panel kick-off briefing |
| 22 July 2021 | Request for Information from Council to applicant |
| 27 August 2021 | Amended plans lodged with Council:   * Acoustic report * Odour assessment * Architectural plans * Landscape plans * Engineering plans * Substantially the same analysis |
| 15 September 2021 | Panel briefing |
| September 2021 | DA referred to Council officers. |

1. **STATUTORY CONSIDERATIONS** 
   1. **Section 4.55 Modifications of consents - (2) Other modifications**

Section 4.55(2) of the EP&A Act enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided the consent authority is satisfied of the following.

1. is satisfied 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)

The modification is considered to be substantially the same development as originally approved. The application seeks to maintain the approved land use, being a residential aged care facility, and the proposal maintains and/or improves elements of the approved development including reduced building footprint, increased floor levels to account for flooding outcomes, streetscape and landscaping, visual and acoustic privacy to adjoining residences. Elements of the proposal which are maintained as approved include rear setbacks and treatment of the riparian corridor.

A summary of the key changes is outlined in Table 3 and considered in more detail below.

**Table 3: Summary of original approval and proposed modifications**

| **Matter** | **Original approval** | **Proposed modification** |
| --- | --- | --- |
| Site area | 15,307m2 | 15,307m2 |
| Number of beds | 144 over two levels | 110 over one level |
| Hours of operation | 24 hours a day, seven days a week | 24 hours a day, seven days a week |
| Staff on-site | 30 | 55 |
| Building height | 10.5m | 10.1m |
| Gross floor area | Approximately 7,700m2 | Approximately 6,600m2 |
| Landscaping | Approximately 5,200m2 (34% of site area) | Approximately 5,000m2 (33% of site area) |
| Tree removal | 14 | 15 |
| Vehicle access | 1 | 3  One provides entry/exit and other two provide single entry and single exit) |
| Car parking spaces | 36 spaces + 1 ambulance bay  Located in front setback | 43 spaces + 1 ambulance bay  Primarily located in ground floor car parking area below building |
| Rear setback / 30m riparian zone encroachment | 30m  Roof encroachment 50m2 | 30m  Roof encroachment 3m2 |
| Eastern side setback | 5.3m (roof)  7.1m (building) | 6.2m (roof)  8.3m (building) |
| Western side setback | 6.2m (roof)  8.1m (building) | 5m (roof)  9.1m (building) |
| Front / street setback | 34m  Car parking provided to street | 3.8m to porte-cochere  Main building 12-14m  Building provided to street with porte-cochere |
| FFL | Level 1: 6.5m AHD (includes habitable rooms)  Level 2: 11m AHD (includes habitable rooms) | Level 1: 5.1m AHD (no habitable rooms)  Level 2: 8.3m AHD (includes habitable rooms) |
| Solar access |  | Increase in overshadowing in north-eastern and north-western corners, however within the site only.  Reduced overshadowing of properties to west on Jonathan Street.  Reduced overshadowing of rear riparian zone, which is wholly within the site.  Reduced overshadowing of properties to east in adjoining seniors housing development. |

Qualitatively and quantitative, it is considered the proposal is substantially the same as originally approved.

1. it has consulted with the relevant Minister, public authority or approval body 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

General terms of approval (GTAs) were provided by Subsidence Advisory NSW (SA NSW) and the Natural Resource Access Regulator (NRAR). Conditions were imposed on the consent from both agencies.

The modification application has been referred to NRAR with who raised no objections and provided revised GTAs dated 27 August 2021. The GTAs have been included as recommended conditions of consent.

The modification application was referred to SA NSW. SA NSW rejected the referral in NSW Planning Portal as the site is no longer in a proclaimed mine subsidence district. The previously imposed conditions are recommended to be removed.

1. has notified the application in accordance with the regulations, if the regulations so require, or 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
2. has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

The applications was notified in accordance with the Council’s Community Participation Plan from 17 June 2021 until 15 July 2021. A total of two unique submissions, both in objection to elements of the proposal. The issues raised in these submissions are considered in Table 10.

The application has satisfactorily demonstrated it can be considered as a 4.55(2) and can therefore be determined by the Panel.

Section 4.55(3) of the EP&A Act requires the consent authority to take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The reasons for determination and assessment are outlined in Table 4 below.

**Table 4: Consideration of reasons for determination**

| **Reason** | **Consideration** |
| --- | --- |
| Clause 4.6 variation of building height  Compliance with the standard was unnecessary, and there were sufficient environmental planning grounds to support the proposed variation, as the proposal was considered consistent with the zone objectives and consistent with the objectives of the height standard within Clause 4.3 of LMLEP 2014.  The specific nature of the site, including the slope of the land, need to address flooding, the localised areas of non-compliance and design/mitigation measures, resulted in a development that suited the site and did not cause any significant impacts on neighbouring land from the height non-compliance.  The height non-compliance occurred towards the rear of the site, which generally arose from the siting, which appropriately provided a significant front setback for a well landscaped carpark, given the zone objectives. | The application maintains a building height variation, however lower than approved.  The reasons for the variation remain the same, as specified in the reasons, and the original reasons for decision remain relevant. |
| Environmental assessment  Proposal appropriately balanced the zone objectives, site constraints and relationship with adjoining development to provide an appropriate development for the site, which will also help to meet the social and health needs of an ageing society.  The visual setting of the site was affected by adjoining development, yet the well landscaped carpark provided an appropriate landscape setting.  The flooding and riparian aspects were addressed by setbacks and proposed floor levels, and mitigation measures addressing potential privacy impacts (visual and aural) to adjoining land were addressed by conditions of consent, modified since the public meeting. | The application maintains appropriate environmental outcomes, consistency with the zone objectives and site constraints, and maintains appropriate amenity to adjoining residences.  The visual outcomes of the development have been modified, however provide an improved outcome and retain the intent of the reasons for decision.  The reasons for decision remain relevant. |

Section 4.55(3) of the EP&A Act requires the consent authority to take into consideration such of the matters referred to in Section 4.15(1) as are of relevance to the development the subject of the application. These matters are further considered below.

* 1. **Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

* *State Environmental Planning Policy No. 55 – Remediation of Land*
* *State Environmental Planning Policy No. 64 – Advertising and Signage*
* *State Environmental Planning Policy (State and Regional Development) 2011*
* *State Environmental Planning Policy (Infrastructure) 2007*
* *State Environmental Planning Policy (Coastal Management) 2018*
* *State Environmental Planning Policy (Koala Habitat Protection) 2021*
* *Lake Macquarie Local Environmental Plan 2014*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in Table 5 and considered in more detail below.

**Table 5: Summary of Applicable State Environmental Planning Policies**

| **EPI** | **Matters for consideration** | **Comply (Y/N)** |
| --- | --- | --- |
| SEPP 55 | Clause 7 - Contamination and remediation  This matter has been considered satisfactory under the original application and significant changes are proposed under the modification application and the proposal remains satisfactory. | Y |
| SEPP 64 | Business signage is proposed and has been considered against Schedule 1 of the SEPP. | Y |
| SRD SEPP | The original application, PPS-2016HCC014, was referred to the Panel as it satisfied the regional development criteria, being general development over $20 million.  The subject modification application is referred to the Panel in accordance with section 123BA of the Environmental Planning and Assessment Regulation, 2000. | Y |
| Seniors SEPP | The SEPP does not technically apply to the development, however the provisions/standards of the SEPP are used as a design and assessment tool due to the absence of specific merit controls applying to Clause 7.12 under the LEP. | Y |
| Infrastructure SEPP | Clause 45 - Determination of development applications—other development) – electricity transmission.  The proposal has been referred to Ausgrid who are satisfied with the proposal, noting contact has been made previously by the applicant and a kiosk has been incorporated in to the development.  A condition of consent exists on the consent (condition 55) which will be maintained. | Y |
| Clause 101 - The development was referred to TfNSW for advisory. TfNSW rejected referral in NSW Planning Portal. |
| Coastal Management SEPP | Clause 13 and 14 - Development on land within the coastal environment area and coastal use area.  The proposal is satisfactory. | Y |
| Koala SEPP 2021 | Under Clause 11 the policy applies to the site.  Council’s Ecologist has considered the proposal and is satisfy the proposal is acceptable. | Y |

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

The provisions of *State Environmental Planning Policy 55* *- Remediation of Land* were considered in the assessment of the original application and the land was considered suitable for its intended purpose without remediation works required.

The application does not proposed changes that warrant further investigation, and the previous consideration of the site being suitable for residential purpose remains satisfactory.

**State Environmental Planning Policy No. 64 – Advertising and Signage**

The approved development included a 1m high x 2.2m business identification wall signage at the main vehicular entry.

The modification application proposes two business identification signs, as follows:

* 1.38m x 2.9m adjacent to the porte-cochere entry driveway.
* 1.08m x 2.3m in height adjacent to the eastern driveway.

Clause 8 of SEPP 64 requires the consent authority to be satisfied signage is consistent with the objectives of the SEPP and that signage satisfies the assessment criteria specified in Schedule 1. Assessment against clause 3(1)(a) and Schedule 1 is provided in Table 6 below.

**Table 6: Schedule 1 Assessment**

| **Control** | **Proposal** |
| --- | --- |
| Objectives | The proposed signage is considered to be compatible with the amenity and visual character of an area, provides effective communication in a suitable location, and is of high-quality design and finish. |
| Character of the area | There is limited signage within the locality, however the signage proposed is business identification signage only, and sensitive to the character of the area. |
| Special areas | The signage does not detract from the amenity of the area. |
| Views and vistas | The signage does not obscure or compromise important views.  The signage does not project above the height of the proposed building or trees within the front setback of the site. |
| Streetscape, setting or landscape | The signage is limited in scale, has been sensitively located in the site, and is considered appropriate for the existing streetscape. |
| Site and building | The signage is compatible with the scale and proportion of the development. |
| Associated devices and logos with advertisements and advertising structures | The Arcare corporate logo has been sympathetically integrated into the design of the signage. |
| Illumination | Signage will be illuminated. Given the positioning of the signage and purpose for business identification signage only, the illumination isn’t likely to have an adverse impact upon surrounding residences. |
| Safety | The proposed signage has been appropriately located to ensure safety for road users is not compromised. |

**State Environmental Planning Policy (State and Regional Development) 2011**

The original application, PPS-2016HCC014, was referred to the Panel as it satisfied the regional development criteria, being general development over $20 million.

The subject modification application is referred to the Panel in accordance with section 123BA of the Environmental Planning and Assessment Regulation, 2000.

Accordingly, the Hunter and Central Coast Regional Planning Panel is the consent authority for the application.

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

The SEPP does not technically apply to the development, however the provisions/standards of the SEPP are used as a design and assessment tool due to the absence of specific merit controls applying to Clause 7.12 under the LEP.

The site is zoned RU4 Primary Production Small Lots and R2 Low Density Residential zone. Dwelling houses are permitted land uses in these zones and the land can be classified as land zoned primarily for urban purposes, and a site compatibility certificate is not required.

A summary of the key matters relating to the modification is outlined in Table 7.

**Table 7: Summary of Seniors Housing SEPP controls**

|  |  |  |
| --- | --- | --- |
| **Clause** | **Discussion** | **Comply (Y/N)** |
| Availability of facilities and services  (cl. 26) | The development provides a shuttle bus to enable access for residents to facilities and services not available on the site. | Y |
| Landscape area  (cl. 48(c)) | Refer to discussion under Key Issues. | Y |
| Parking for residents and visitors  (cl. 48(d)) | Refer to discussion under Key Issues. | Y |
| Fire sprinkler systems  (cl. 55) | The application proposes to install a fire sprinkler system in accordance with relevant Australian Standards.  Given the application is not made under the SEPP, provision of details of the system can be deferred to the construction certificate phase. | Y |

**State Environmental Planning Policy (Infrastructure) 2007**

The original application was referred to Ausgrid under clause 45 of the Infrastructure SEPP.

The modification application has been referred to Ausgrid who are satisfied with the proposal, noting contact has been made previously by the applicant and a kiosk has been incorporated in to the development. A condition of consent exists on the consent (condition 55) which will be maintained requiring compliance with Ausgrid requirements

The modification application was referred to Transport for NSW (TfNSW) for advisory comments under clause 101. TfNSW rejected referral in NSW Planning Portal as it is not traffic generating development, nor located on a classified road.

**State Environmental Planning Policy (Coastal Management) 2018**

The original application was assessed against the provisions of *State Environmental Planning Policy No. 71 – Coastal Protection* and considered acceptable.

The site is located within the coastal zone and subject to the provisions of clause 13 (coastal environment area), clause 14 (coastal use area) and clause 15 (risk of coastal hazards) of the *State Environmental Planning Policy (Coastal Management) 2018*.

The application is considered to be consistent with the relevant provisions of clause 13, 14 and 15 as follows:

* Does not adversely impact upon any ecological features/attributes of the site, including flora and fauna associated with the riparian zone at the rear of the site.
* Does not adversely impact Aboriginal cultural heritage, practices and places on or near the site.
* Does not adversely impact the visual amenity of the coast.
* Manages flooding associated with the site and mitigates impacts to downstream catchments.

**State Environmental Planning Policy (Koala Habitat Protection) 2021**

The development site has an area in excess of 1 hectare, and is subject to the Koala SEPP 2021. Lake Macquarie City Council does not have a koala plan of management, and the application is to be considered against clause 11 of the SEPP.

The applicant has submitted information demonstrating the development will have low or no impact to koala habitat given the limited sightings of koalas and the environmental features of the site.

Council’s Flora and Fauna Officer has reviewed the proposed and confirmed no further koala assessment is required.

**Lake Macquarie Local Environmental Plan 2014**

The relevant local environmental plan applying to the site is the *Lake Macquarie Local Environmental Plan 2014* (‘the LEP’).

The site is zoned RU4 Primary Production Small Lots and R2 Low Density Residential zone pursuant to Clause 2.3 of the *Lake Macquarie Local Environmental Plan* (*LMLEP*) 2014 (refer to Figure 1).

Seniors Housing is permitted with consent under *LMLEP 2014,* however is not permitted in the RU4 zone. The original consent was approved under clause 7.12 of the *LMLEP* 2014, which was in force at the time however ceased on 10 October 2016. This clause allowed for development of land for purposes of Seniors Housing. The original consent remains valid and establishes a lawful and permitted use at the site. The modified development is considered to be substantially the same, as previously detailed in this report, and therefore can be considered as a modification to the original consent permitted land use.

The proposal is considered to be consistent with the zone objectives for the following reasons:

* The development provides for the housing needs of the community within a low density residential environment (R2).
* The development is sympathetic to the scenic, aesthetic and cultural heritage qualities of the surrounding built and natural environment (R2).
* To maintain or improve the quality of the environment (RU4).

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in Table 8 below.

**Table 8: Consideration of the LEP controls**

| **Control** | **Requirement** | **Proposal** | **Comply** |
| --- | --- | --- | --- |
| Height of buildings  (cl 4.3) | 8.5m | 10.1m  Refer to discussion under Key Issues. | N |
| Acid sulphate soils  (cl 7.1) | Development consent is required for the carrying out of certain works on the Acid Sulfate Soils Map. | The development footprint is located in an area mapped as class 5 acid sulfate soils.  The rear of the site is mapped as class 3 soils. No works are proposed in this area.  The consent maintains a condition of consent requiring construction works to maintain any acid sulfate soils encountered (refer to condition 22). | Y |
| Earthworks  (cl 7.2) | Consideration must be given to:   1. Impacts on drainage patterns, soil stability or environmentally sensitive areas. 2. the effect on the development, including on amenity of adjoining properties. 3. the source and quality of the fill to be excavated. 4. the likelihood of disturbing relics 5. measures to avoid, minimise or mitigate impacts. | The application proposes excavation up to a maximum of 900mm, and fill up to 500mm, which are located within the building footprint.  Appropriate stormwater management has been included to ensure the works do not have impacts upon drainage patterns.  Earthworks are offset from the site boundaries, and therefore minimise impacts to adjoining properties and the riparian zone to the rear.  A Geotechnical Report was submitted under original proposal which assessed site classification and does not highlight any issues. |  |
| Flood planning  (cl 7.3) | Development consent must not be granted unless the consent authority is satisfied the development:  (a) is compatible with the flood hazard of the land  (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and  (c) incorporates appropriate measures to manage risk to life from flood, and  (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and  (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding. | Proposal is consistent with provisions of the clause.  Refer to discussion under Key Issues. | Y |
| Essential services  (cl. 7.21) | Development consent must not be granted unless the consent authority is satisfied the following services are available to the development:  (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. | The site has adequate availability of water, sewer, electricity and telecommunications to service the development.  The development has incorporated appropriate stormwater management.  Suitable vehicle access is provided to the development | Y |

The proposal is considered to be generally consistent with the LEP.

* 1. **Section 4.15 (1)(a)(ii) - Provisions of any proposed instruments**

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, which are considered below.

**Remediation of Land SEPP**

An Explanation of Intended Effect exhibited from 31 January to 13 April 2018.

The intent of this draft SEPP is to manage contaminated land, particularly where land is being converted from one use to a sensitive use (such as residential). The key policy changes between SEPP 55 and the draft SEPP relate to remediation of known contaminated land. Given the site does is not contaminated, the provision of the draft SEPP are not relevant to the application.

**Housing diversity SEPP**

An Explanation of Intended Effect exhibited from 29 July and 9 September 2020.

The intent of this draft SEPP as it relates to Seniors Housing is to clarify how the SEPP applies to land being used for the purposes of a registered club, update the provisions of environmentally sensitive land, amend the location and access to facilities provisions, extend the validity of a site compatibility certificate to five years, and clarify that development standards in a local environmental plan prevail to the extent of any inconsistency with the SEPP.

Given the application has not been lodged under the Seniors SEPP, the draft SEPP is not relevant to the application.

**Draft Local Environmental Plan 2014 – clause 5.21 Flood planning**

Since the lodgement of the application, clause 5.21 has been incorporated in to the Standard Instrument and the *LMLEP 2014.*

The new clause maintains the same assessment criteria as clause 7.3 in the *LMLEP 2104* with the inclusion of safe occupation and efficient evacuation provisions.

The flooding documentation submitted with the application identifies the proposal can achieve safe occupation and recommends staying in place during a flood event due to the nature of the facility.

* 1. **Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The *Lake Macquarie Development Control Plan 2014* (‘the DCP’) is relevant to the application. In particular, Part 2 Development in Rural Zones and Part 4 Development in Residential zones.

The controls relevant to the proposal are considered in Table 9 below.

**Table 9: Consideration of DCP controls**

| **Control** | **Discussion** | **Comply** |
| --- | --- | --- |
| Geotech | Council’s Development Engineer has advised the original Geotech Report submitted with the application provides sufficient detail about subsoil conditions, groundwater levels and depths, and no further report is required.  The officer has reviewed and is satisfied with the modification application. | Y |
| Stormwater | The development includes stormwater infrastructure that captures stormwater generated by the development and through a series of pipes, mostly located under the building, directs to detention tank located beneath the driveway before discharging to South Creek.  Stormwater from roof areas will be directed to a rainwater tank for re-use in landscaping areas in the development. Overflow will be directed to the detention tank.  Existing overland flow and stormwater from landscaping areas will be directed to existing drainage channels on the site, or to South Creek. | Y |
| Natural water systems | The application proposes to maintain the approved 30m setback to the creek and located the building outside of the riparian zone. The development also includes appropriate stormwater management, and will install appropriate erosion and sediment controls to protect the creek and riparian zone.  Council’s Environmental Systems – creeks and watercourses officer has reviewed and is supportive of the development. | Y |
| Flora and fauna | The outcomes approved under the original consent are retained, or improved, including retaining the vegetation management plan for the riparian zone.  The officer has reviewed and is supportive of the development subject to recommended modified conditions regarding the vegetation management plan.  For tree removal, refer to Key Issues discussion. | Y |
| Aboriginal heritage | Condition 76 addresses the circumstance of finding Aboriginal relics during the course of construction. This condition is not proposed to be amended. | Y |
| Street setback | The main building is set back from the street between 12 and 14m. This setback is considered appropriate as it complements setbacks to adjoining lands and provides for appropriate landscaping to be implemented in the front setback. | Y |
| Side and rear setback | The application proposes side setback of 8.3m (east) and 9.1m (west). These setbacks are considered to be appropriate as they provide separation to the adjoining lands, opportunity for landscaping and are larger than approved by generally 1m. | Y |
| Streetscape / building bulk / roofs | The proposal is considered to achieve appropriate built form and streetscape outcomes as follows,   * The proposed building presents as a single storey to the street with the rear being elevated over an undercroft area. The development reflects a residential character that compliments existing surrounding residential development. * Bringing the building closer to the street, in place of the approved at-grade car parking area, is considered to be a significantly improved streetscape outcome. * The modified design is longer, but lower and thereby reduces impact on adjoining properties. * Landscaping and appropriate fencing treatment has been provided. * Roof pitch has been modified from a higher skillion design, to a variety of pitched roofs that slope away from boundaries. | Y |
| Solar access | The development achieves appropriate solar access outcomes, with limited impact to adjoining lands.  Shadows cast by the development largely fall within the site, and due to the orientation of the lot, adjoining residences will maintain solar access in either the morning or afternoon period during the winter solstice, depending on their orientation.  It is acknowledged there is an increase in overshadowing of the modified development (in comparison to the approved), which relates to the north-eastern and north-western corners, however shadows fall within the site only.  Within the development, the building orientation and central courtyard designs ensures rooms are provided with sufficient solar amenity. | Y |
| Energy efficiency | The development will be subject to compliance with the relevant provisions of Section J of the BCA. | Y |
| Visual privacy | Refer to discussion under Key Issues. | Y |
| Landscaping and fencing | Refer to discussion under Key Issues. | Y |
| Traffic and transport | Refer to discussion under Key Issues. | Y |
| Car parking provision | Refer to discussion under Key Issues. | Y |
| Non-discriminatory access | A revised access audit report/documentation has been submitted with the modification application. The report outlines the development can achieve relevant standards, with further detail to be provided as part of the construction certificate process. The report also identifies several opportunities for performance-based solutions.  Council’s Disability Access officer has reviewed and supported the recommendations of the report. The report is to be included in the recommended modified conditions of consent. | Y |
| Crime prevention | The original application was accompanied by a Crime Risk Assessment Report which addressed access control, landscaping maintenance, signage, maintenance plans and lighting. A condition of consent was also imposed to reinforce the recommendations of the report (refer to condition 38).  The proposal is considered to maintain appropriate outcomes as follows:   * Natural surveillance throughout the facility through building design and orientation * Access control through clear way making throughout the access * Territorial reinforcement through appropriate design to reinforce public and private areas * Space management through existing conditions relating to graffiti management and landscaping management. | Y |
| Operational waste management | The application proposes to engage private contractors for all waste streams associated with the development.  A dedicated waste room is located in the ground floor, which has direct external access. Loading and waste collection will be accommodated at the end of the driveway located along the eastern boundary of the site.  Internally, waste chutes are provided to transfer waste from the first floor to the waste room at ground floor.  Documentation has been submitted from a potential waste contractor confirming the development can be serviced. | Y |
| Erosion and sediment | Revised erosion and sediment control details have been submitted with the application, including the relocation and design of temporary sedimentation ponds where no trees are to be retained.  Council’s Erosion and Sediment Control Officer has reviewed and supported the revised erosion and sediment outcomes.  The consent maintains several conditions relating to erosion and sediment control, and these will be retained and updated as necessary to reflect the revised outcomes. | Y |
| Air quality | Refer to discussion under Key Issues. | Y |
| Noise and vibration | Refer to discussion under Key Issues. | Y |

The original development was subject to Section 94 development contributions, which were imposed upon the consent. The modification continues to attract contributions, and modified contributions have been included in the recommended modified conditions of consent.

* 1. **Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

* 1. **Section 4.15(1)(a)(iv) - Provisions of Regulations**

Clause 92(1) of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. No matters are relevant to the modification application.

* 1. **Section 4.15(1)(b) - Likely impacts of development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts have been detailed throughout the assessment report.

* 1. **Section 4.15(1)(c) - Suitability of the site**

It is considered the development fits the locality. The built form reflects a residential scale and character and has given due consideration to the surrounding context, residences and site constraints.

* 1. **Section 4.15(1)(d) - Public submissions**

These submissions are considered in Section 5 of this report.

* 1. **Section 4.15(1)(e) - Public interest**

The development is considered to achieve balanced and orderly outcomes, and is in the public interest. The development has demonstrated no significant amenity impacts will arise now or in the future, subject to the imposition and compliance with recommended conditions of consent.

1. **REFERRALS AND SUBMISSIONS** 
   1. **Agency Referrals and Concurrence**

The development application has been referred to agencies for comment and referral as required by the EP&A Act and outlined below in Table 10.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

**Table 10: Concurrence and Referrals to agencies**

| **Agency** | **Concurrence/**  **referral trigger** | **Comments** | **Resolved** |
| --- | --- | --- | --- |
| Concurrence Requirements (s4.13 of EP&A Act) | | | |
| N/A | | | |
| Referral/consultation agencies | | | |
| TfNSW | Clause 101 – Development with frontage to classified road | The development was referred to TfNSW for advisory comment.  TfNSW rejected the referral in NSW Planning Portal as the proposal is not traffic generating development, nor located on a classified road. | Y |
| Ausgrid | Clause 45 - Determination of development applications—other development) – electricity transmission. | The proposal has been referred to Ausgrid who are satisfied with the proposal, noting contact has been made by the applicant previously and a kiosk has been incorporated in to the development.  A condition of consent exists on the consent (condition 55) which will be maintained. | Y |
| Integrated development (S 4.46 of the EP&A Act) | | | |
| Natural Resources Access Regulator | S89-91 – *Water Management Act 2000*  Water use approval, water management work approval or activity approval under Part 3 of Chapter 3. | The proposal has been referred to NRAR, who provided GTAs on 27 August.  The GTAs will be included in the recommended modified conditions of consent. | Y |
| Subsidence Advisory NSW | S22 – *Coal Mine Subsidence Compensation Act 2017*  Alter or erect improvements within a mine subsidence district. | The development was referred to SA NSW. SA NSW rejected the referral in NSW Planning Portal as the site is no longer in a proclaimed main subsidence district. | Y |

* 1. **Council referrals**

The development application has been referred to various Council officers for technical review as outlined Table 11.

**Table 11: Consideration of Council referrals**

| **Officer** | **Comments** | **Resolved** |
| --- | --- | --- |
| Traffic and roads | The officer confirmed kerb and channel will be required along the full frontage of the site, with parking lane. This has already been conditioned upon the consent (refer to condition 82) and will be retained.  The officer highlighted the number of driveways and recommended these be minimised. Refer to discussion under Key Issues. | Y |
| Flooding | A revised flooding report has been submitted with the modification application.  Council’s officer has reviewed the report and is satisfied with the recommendations. The proposal achieves the required finished floor levels which accounts for the PMF. | Y |
| Engineer | The officer has reviewed and is supportive of the development, particularly acknowledging the modified development has included appropriate stormwater management.  The consent maintains several conditions relating to stormwater management and road works. These will be retained and updated as necessary to reflect the revised outcomes. | Y |
| Flora and Fauna | The outcomes approved under the original consent are retained, or improved, including retaining the vegetation management plan for the riparian zone.  The officer has reviewed and is supportive of the development subject to recommended modified conditions regarding the vegetation management plan. | Y |
| Environmental Systems – creeks and watercourses | The officer has reviewed and is supportive of the development, particularly acknowledging the modified development has included appropriate stormwater management, minimised earthworks near the riparian zone, maintained an appropriate setback to the creek and will install appropriate erosion and sediment controls. | Y |
| Landscape | Landscaping documentation has been submitted with the application.  Concerns were initially identified by Council’s Landscape Architect regarding planting within the overland flow path, fencing design and colour, and revised planting outcomes.  Revised landscaping documentation has been submitted with the modification application. The officer has reviewed and supported the revised outcomes. The plans are to be included in the recommended modified conditions of consent. | Y |
| Arborist | An Arborist report has been submitted with the application.  The officer acknowledges the additional tree removal proposed, and supports the development subject to approval of Arborist Report and revised tree protection measure conditions. | Y |
| Environmental Management | Revised acoustic and odour report/documentation has been submitted with the modification application.  The officer has reviewed and supported the recommendations of the reports. The reports are to be included in the recommended modified conditions of consent. | Y |
| Health | The officer has reviewed and is supportive of the development.  The consent maintains several conditions relating to fit out of food handling areas, and disposal of medical waste, and these will be retained and updated as necessary to reflect the revised outcomes. | Y |
| Disability access | A revised access audit report has been submitted with the modification application.  The officer has reviewed and supports the recommendations of the report. The report is to be included in the recommended modified conditions of consent. | Y |
| CPTED | A revised CPTED report has not been submitted with the modification application.  The officer requested a revised report be submitted, however an assessment of the development against CPTED principles has been undertaken and the proposal is considered to achieve appropriate outcomes. The existing report, and recommendations will be retained on the consent. | Y |
| Building Surveyor | A BCA compliance assessment has been submitted with the modification application.  The report identifies several matters that will need to be addressed during the preparation of the Construction Certificate. The applicant has confirmed none of these changes will impact upon the design or siting of the building to enable the issue of the modified consent.  The officer has reviewed and is supportive of the development. | Y |
| Erosion and sediment | The officer has reviewed and supported the revised erosion and sediment outcomes.  The consent maintains several conditions relating to erosion and sediment control, and these will be retained and updated as necessary to reflect the revised outcomes. | Y |

Issues raised by Council officers during the assessment of the application are considered in the Key Issues section of this report.

* 1. **Community consultation**

The proposal was notified in accordance with the Council’s Community Participation Plan from 17 June 2021 until 15 July 2021 to adjoining properties and properties on the opposite side of Warners Bay Road.

A total of two unique submissions, both in objection to elements of the proposal were received. The issues raised in these submissions include the following:

* Increased traffic
* Light spill impacts to adjoining properties
* Landscaping and fencing to interface with adjoining properties

The issues raised in these submissions are considered in Table 10.

**Table 12: Community submissions**

| **Issue** | **No of submissions** | **Council Comments** |
| --- | --- | --- |
| Increase traffic and safety concerns | 1 | The original development was accompanied by a traffic impact assessment which confirmed the traffic generated by the development was acceptable and could be accommodated within the road network.  An updated traffic impact assessment has been submitted with the application and confirms the development remains acceptable with regards to impacts on the road network. |
| Light glare / spill from footpath along western boundary | 1 | The proposed footpath along the western boundary is to enable pedestrian access from the lower floor car parking area, and is expected to be utilised generally in emergencies and not require lighting at night.  Regardless, the consent maintains conditions of consent lighting is installed in accordance with Australia Standards which will ensure lighting does not impact upon adjoining residences. |
| Landscaping and fencing interface with adjoining properties.  Concern over landscaping to eastern boundary overshadowing adjoining residences.  Concern over the use of solid dark fencing along the eastern boundary | 1 | The application proposes to establish medium to high shrubs along the eastern boundary fencing to achieve visually acceptable outcomes. These plantings will be no higher than the adjoining 2m high acoustic fence.  Canopy trees are also proposed within this location, however will still enable sunlight to penetrate to the adjoining residences.  The eastern boundary fencing is required to be at least 2m in height and solid where adjoining residences. Open fencing would not achieve acoustic requirements and result in poor amenity outcomes.  The use of a dark colour complements the remainder of the fencing throughout the development and is considered appropriate. |

1. **KEY ISSUES**

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail.

* 1. **Flooding**

The site is identified as being located within a Flood Planning Area and is subject to catchment flooding, being impacted by flood waters from South Creek and also from Warners Bay Road. Flood studies for the area were updated in 2019, which post-dates the original approval.

The original development was approved with residential rooms on the ground and first floor having finished floor levels of 6.5m AHD and 11m AHD respectively, which accounted for the known probable maximum flood (PMF) at the time.

A flood assessment has been submitted with the modification application. Supplementary information was also submitted by the applicant during the assessment. The documentation confirms the development has been appropriately designed and positioned to achieve required flooding outcomes, including,

* The rear of building is designed as an open undercroft to allow passage of water, and minimise impacts of flooding to the development and adjoining properties.
* Previously approved fire stairs, which would have impeded flood waters, have either been relocated or will be fitted with a flood proof door or flood proof gate to restrict flood waters entering the building.
* Use of open style fencing and openings in retaining walls where crossing overland flow paths.
* Installation of kerb and guttering to site frontage which will divert flows from the site and to the existing Council drainage system.
* Ground floor uses, such as car parking, back of house and staff rooms have a finished floor level of 5.1m AHD (minimum) and is located above and clear of the 1% AEP flood event.
* The residential care facility has a finished floor level of 8.3m AHD and is located on the first floor, which achieves the PMF floor levels required for residential care facilities, being 8.25m AHD for the site (which also accounts for 500mm freeboard).

Clause 7.3 of the LEP requires development to be compatible with the flood hazard of the land, not result in flooding impacting upon the development or surrounding properties, incorporate measures to manage risk to life, and not impact the natural environment. The proposal is considered to be consistent with the LEP as follows,

* The application has demonstrated the proposal is compatible with the flooding site’s flooding hazard.
* The development is not adversely impacted by flood events through the appropriate siting and design of the building.
* The development does not result in downstream impacts, impacts to the natural environment or impacts to adjoining property and does not adversely modify flooding behaviour.
* The development manages risk to life through providing finished floor levels which accounts for the revised PMF, and provides an improved outcome to the original approval.

Council’s officer has reviewed the report and is satisfied with the recommendations.

* 1. **Acoustic impact**

The original development was accompanied by an acoustic assessment which recommended the following measures:

* 2.2m high acoustic fence to the eastern boundary
* 1.8m high acoustic fence to part of the western boundary, due to loading/delivery area.

A revised acoustic assessment has been submitted with the modification application. The report reconfirms an acoustic fence is required along the eastern boundary, however the height can be reduced to 2m and 1.8m where not adjoining a residence.

The eastern boundary fencing is no longer required for acoustic purposes, however is being maintained to provide boundary delineation and visual privacy.

The report has also considered potential noise from residences, passenger vehicles, and waste and service vehicles to surrounding receivers. The report has concluded the development does not generate noise levels above the relevant thresholds, and no further acoustic treatments are required in the development. Further, condition 37 of the consent is to be retained, which limits the times of deliveries and services for the development.

The report makes recommendations for the use of certain building materials and techniques to ensure noise levels are achieved.

Council’s Environmental Manager Officer has reviewed and supports the recommendations of the report. The officer recommends inclusion of the report as an approved document, and revision of condition 65 to reflect the new report.

* 1. **Odour impact**

The original development was accompanied by an odour assessment which recommended the following measures be implemented to the ventilation system to minimise impacts on sensitive receptors in the vicinity of the development:

* Roof exhausts to have a stack height of at least 2m above the roof.
* Exhausts for the laundry room and food preparation activities to discharge vertically with a lateral separation distance of at least 4m.
* Mechanical ventilation (i.e. exhaust fan) at a minimum velocity of 15 m/s at the exhaust exit.
* Consideration of the incorporation of small scale odour treatment (such as charcoal) in the exhaust stream.

The odour report is an approved document under the original consent, and condition 69 refers to the report.

A revised odour assessment has been submitted with the modification application. The report reconfirms the kitchen and laundry areas to be the main odour sources, which are located within the eastern section of the lower floor.

The report identifies the changes to the development do not result in an increase in the impact of potential odours and the findings of the previous assessment remain valid for the modified development. In comparison to the original consent, the kitchen and laundry areas are now 40m south of the previous location, the reduction in beds and removal of health hub decreases the use of the facilities, and car parking areas are deemed to not have impacts due to infrequent use. It is recommended the previous ventilation requirements are maintained to provide an improved outcome for surrounding receivers.

Council’s Environmental Manager Officer has reviewed and supports the recommendations of the report. The officer recommends inclusion of the report as an approved document, and revision of condition 69 to reflect the new report.

* 1. **Tree removal**

The original development approved the removal of nine trees. The Arborist Report submitted with the application assessed 20 trees.

An Arborist Report has been submitted with the modification application which assesses 38 trees (an additional 18 trees). The report clarifies tree removal which was approved, however not clearly identified for the original consent included five trees (trees 21, 23, 24, 25, 26). The identification of additional trees is a consequence of better survey effort being completed for the modification application.

The modification application proposes to remove one additional tree, which is located in the centre of the site and was previously a ‘feature tree’ based upon the previous layout. Due to the changes in the building siting and design, this tree can no longer be retained. Replacement planting is incorporated into the proposed landscaping to compensate for this tree removal. A total of 15 trees are proposed to be removed.

Council’s Arborist has reviewed and supports the additional tree removal subject to approval of Arborist Report.

* 1. **Traffic and car parking**

The original development was accompanied by a traffic impact assessment which estimated the development to have 144 vehicle movements per day that could be accommodated for within the road network. An updated traffic impact assessment has been submitted with the application which identifies the development to have 110 vehicle movements per day, and remains acceptable with regards to impacts on the road network.

The original development incorporated a single access into the site. The modification application proposes to install the following access and egress:

* 5.5m wide access to ground floor car parking that provides for two-way traffic.
* Two 3.5m wide driveways that provide separate entry and exit to the porte-cochere

It is considered the multiple accesses are appropriate. The design of the access to the porte-cochere enables safe entry and exit movements for short-term users of the facility, whilst the access to the ground floor parking area enables safe movement for longer term users, and removes conflicts between the two areas.

The development provides sufficient car parking as follows:

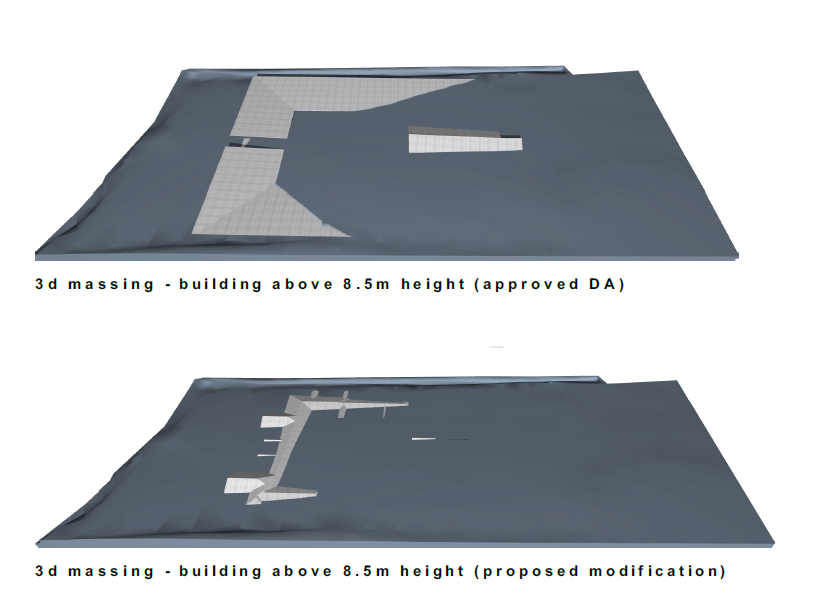
* Six car parking spaces including one accessible space are provided adjacent to the porte-cochere.
* One ambulance parking space is provided within the porte-cochere.
* Thirty-seven car parking spaces including two accessible spaces are provided within the ground floor car parking area.
* Two motorcycle spaces are provided within the ground floor car parking area.
* A shuttle bus and parking space is proposed within the ground floor car parking area.
* Fourteen bicycle spaces are proposed across the site, including two at the building’s entrance and 12 spaces within the ground floor car parking area. End of trip facilities have also been provided.

The application provides car parking which is consistent with SEPP Seniors and Council’s DCP. Swept paths provided which have been assessed by Council staff as being acceptable.

The site is serviced by public transport and a cycleway network which provides alternate travel options to the site for visitors and staff.

* 1. **Building height**

The original development was approved with a building height of 10.5m and supported by a clause 4.6 variation.

The modification application proposes a maximum building height of 10.1m, which is lower than approved, however results in a variation to the maximum building height applicable to the site under clause 4.3 of *LM LEP 2014*, being 8.5m. The variation relates to the south-western corner of the building and the central pitched roof section of the building.

**Figure 4: Approved and proposed building height variation**

The height variation is a result of the site’s slope toward the rear of the site, the requirement to maintain a single floor plate for operational requirements, and requirement to achieve a minimum floor level above the 1:100 year flood levels for the site.

The proposed variation to the rear of the building is considered acceptable. Having regard to the surrounding built form context with many examples of two-storey dwellings and the location of the site on the lower side of Warners Bay Road, the building height variation is considered to be appropriate for its location and relate to a building of high quality urban form.

There portion of the building subject of the variation is also set back sufficiently from side boundaries and therefore does not have adverse impacts to adjacent residences.

The proposed central pitch variation is considered acceptable as it is restricted to the centre of the site, set well back from the edges of the main roof, is very minor and does not result in amenity impacts to adjacent properties.

Overall the building heights, including variations, are considered to be acceptable on merit and would not result in unacceptable amenity impacts in the locality.

A clause 4.6 variation is not required as the application relates to a 4.55(2) application.

* 1. **Landscaping**

Revised landscaping and engineering details were submitted with the modification application.

Landscaping is provided throughout the development including:

* Landscaping abutting the eastern boundary and driveway, with inclusion of landscaping bays to assist in visual outcomes from the street.
* Central landscaping courtyards for user amenity.
* Landscaping to street frontage comprising shrub planting, and shade and feature trees for visual interest and amenity.
* Landscaping to western boundary to assist visual privacy whilst being complementary to the drainage easement.
* Street tree planting.

The application proposes a total of 5,000m2 of landscaped area which is consistent with the provisions of SEPP Seniors and Council’s DCP.

Concerns were initially identified by Council’s Landscape Architect and these concerns have been addressed as follows,

* Fencing heights to the street are now lower (1.5m instead of 1.8m) and visually recessive (Jasper). The fence remains as blade fencing to enable permeability of landscaping behind.
* Fencing to the eastern boundary has been revised to end before the riparian zone. Where the fencing adjoins residences, fencing will be solid for acoustic and visual privacy. Where not adjacent to residences, fencing will be open style.
* Fencing to the western boundary has been revised to end at the extent of the southern-most dwelling along Jonathan Street (No. 46).
* Replacement tree planting is proposed in the front setback.
* Revision of planting scheme to remove certain species, replace deciduous plantings in overland flow path, and inclusion of species complementary to the riparian zone.
* Revised planting design to the overland flow path.
* Temporary sedimentation ponds have been relocated where there are no trees to be retained.
* Street tree species are supported, however location is dependent on the design of kerb and guttering works. and footpath. Conditions already apply to the consent that will account for this outcome.

Council’s Landscape Architect has reviewed and supports the revised outcomes.

* 1. **Visual privacy**

The original development was approved with screens to bedroom windows, privacy screens to balconies, and landscaping to achieve appropriate visual privacy outcomes, particularly into living areas and rear private open spaces of properties fronting Jonathan Street to the west.

The modification application proposes to maintain appropriate levels of visual privacy through,

* Lower floor level of the upper level than approved (RL10.00 to RL8.30)
* Reduction from two levels to one level of bedrooms
* Increased setbacks (generally by at least 1m)
* Maintain angled privacy screens to bedrooms on southern half of western elevation
* Maintain privacy screens to common areas in south-western corner of building
* Inclusion of landscaping to northern half of western elevation
* Maintaining and improving landscaping treatment along eastern boundary
* Inclusion of private balconies, however privacy screens included to maintain visual privacy

1. **CONCLUSION AND RECOMMENDATION**

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report.

Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered the application can be supported.

It is recommended Development Application DA/202/2016/A for modification to residential aged care facility at 64-72 Warners Bay Road, Warners Bay be approved pursuant to Section 4.16(1)(a) or (b) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.