

# STATEMENT OF ENVIRONMENTAL EFFECTS PROPOSED MODIFICATION APPLICATION

FOR RETIREMENT VILLAGE AT 392 GALSTON ROAD  
AND 5 MID DURAL ROAD GALSTON

MARCH 2022

## Contents

1.0 INTRODUCTION .....	3
1.1 Background .....	3
2.0 THE SITE AND SURROUNDS .....	5
2.1 The Subject Site .....	5
2.2 Local Context .....	6
2.3 Site Constraints .....	6
3.0 PROPOSED MODIFICATION .....	8
3.1 Proposed Changes to Villas and Internal Road .....	8
3.2 Proposed Changes to Permanent Community Centre .....	9
3.3 Proposed Changes to Consent Conditions .....	10
4.0 PLANNING CONTROLS .....	12
4.1 State Environmental Planning Policy 55 – Remediation of Land .....	12
4.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 .....	12
4.3 State Environmental Planning Policy (Infrastructure) 2007 .....	12
4.4 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 .....	12
4.5 Hornsby Local Environmental Plan 2013 .....	16
4.6 Hornsby Development Control Plan 2013 .....	18
4.7 Seniors Living Policy – Urban Design Guidelines for Infill Development ..	22
4.8 Compatibility Certificate .....	23
5.0 ENVIROMENTAL PLANNING ASSESSMENT .....	25
5.1 Section 4.56 Modification by consent authorities of consents granted by the Court .....	25
5.2 Section 4.15(1)(a)(i) - Environmental Planning Instruments .....	27
5.3 Section 4.15(1)(a)(ii) - Draft Environmental Planning Instruments .....	27
5.4 Section 4.15(1)(a)(iii) - Development Control Plan .....	27
5.5 Section 4.15(1)(a)(iia) - Planning Agreement or Draft Planning Agreement Entered Into Under Section 7.4 .....	28
5.6 Section 4.15(1)(a)(iv) - Regulations .....	28

5.7 Section 4.15(1)(b) - Impacts of The Development .....	28
5.8 Section 4.15(1)(c) - Site Suitability .....	29
5.9 Section 4.15(1)(d) – Submissions .....	29
5.10 Section 4.15(1)(e) - The Public Interest .....	29
5.11 Section 4.15(3A) - Development Control Plans.....	30
6.0 CONCLUTION AND RECOMMENDATION .....	31

Appendix A      Plans Comparison – Villas 26 to 46

Appendix B      Plans Comparison – Permanent Community Centre

## 1.0 INTRODUCTION

Vigor Master Pty Ltd has been engaged by the property owner to prepare a Statement of Environmental Effects in relation to proposed Section 4.56 application to modify the approved housing for older people at 392 Galston Road, Galston (Lot 1 DP 1211969).

The proposed development seeks consent to modify the design of villas 26 to 46, adjust internal accessway serving the modified villas, modify the permanent community centre for BASIX and BCA compliance.

This report addresses the nature of the proposed development and the characteristics of the site and surrounding area. It also provides an assessment of the proposed development under the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979.

This report should be read in conjunction with the other reports and plans prepared to support the application.

### 1.1 Background

The site is zoned RU2 under Hornsby Local Environmental Plan 2013. The original development application was brought under State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004.

Development application (DA/484/2011) involving the construction of a seniors living development containing 76 independent living units and an associated community building was approved by Land and Environment Court on 12 January 2012.

A Section 96 application (DA/484/2011/B) dividing the development into 3 stages was approved by Council on 6 February 2014. A number of consent conditions were modified by this application.

Modification application (DA/484/2011/C) was approved on 30 July 2018 to modify the design of building types B1 and B2 and to change the terms of conditions 3, 8, 12, 17, 19 and 26. Modification application (DA/484/2011/E) was approved on 14/02/2019 to further adjust the design of building types B1 and B2.

Modification application (DA/484/2011/H) was approved on 17 December 2020 to change the layout of villas 11 to 25, design of the permanent community centre, the use of villas 1 and 2 as temporary community centre.

Modification application (DA/484/2011/I) was approved on 13 October 2021 to change the terms of consent conditions.

## 2.0 THE SITE AND SURROUNDS

### 2.1 The Subject Site

The subject site used to comprise 2 allotments, with the northern allotment known as 5 Mid Dural Road, having an area of 2.2023ha and the southern allotment, known as 392 Galston Road, having an area of 1.982ha. The consolidation of the two allotments have been done in accordance with the requirements under the consent condition 8. The site has a street frontage approximately 132m in length to Mid Dural Road, 101m in length to Galston Road.

The site has been used for agricultural purposes in the past, but in recent times has been largely vacant. Currently, the construction of villas 1 to 25 is underway.



Figure 1: Subject Site



## 2.2 Local Context



Figure 2: Local Context

The property is located within the northwest sector of Hornsby Shire Council Local Government Area, on the southern side of the Village of Galston. The Site Compatibility Certificate recognises that the subject development site adjoins the urban area of Galston.

The local centre, within walking distance from the site, provides general and specialist retail, banking, professional and other commercial services.

The residential land uses on the northern side of Mid Dural Road are generally single detached dwellings up to two storeys. The Galston village centre area also includes some medium density, attached two storey terrace style housing.

## 2.3 Site Constraints

The following site constraints have been identified.

ADVISORY	YES/NO	COMMENT
Is the land identified as being possible contaminated?	No	No issue

Is the land identified as being Flood Prone?	No	No issue
Is the land identified as being Bush Fire?	No	No issue
Is a Traffic Impact Assessment required?	Yes	The impact has been assessed under the original DA. New Traffic Report has been prepared to support this modification.
Are there Flora and Fauna, Threatened Species or Native Vegetation Issues?	Yes	The impact has been assessed under the original DA. This modification will not affect the previous assessment.
Are there Aboriginal Significance Issues?	No	No issue
Are there Heritage Issues?	No	No issue
Is the land identified as being land slip risk area?	No	No Issue
Is the land identified as being potentially affected by Acid Sulphate Soils?	No	No issue
Is the land identified as wetland buffer zone?	No	No issue

Where relevant, these issues have been addressed throughout the report



### 3.0 PROPOSED MODIFICATION

This application seeks consent to modify the design of 21 villas in stage 2, adjust the internal accessway serving the 21 villas, modify the design of the permanent community centre for BASIX and BCA compliance.

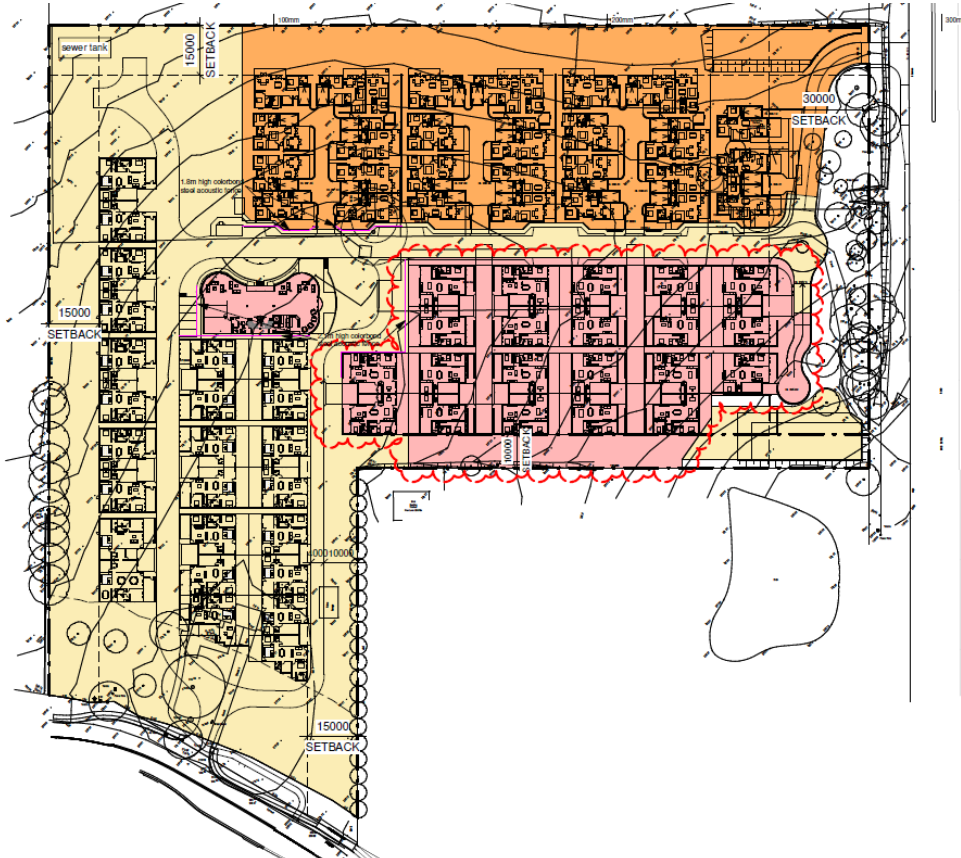


Figure 3: Site Plan

#### 3.1 Proposed Changes to Villas and Internal Road

The proposed modifications are limited to villas 26 to 46. The building changes can improve the internal accessibility and provide more circulation spaces. The change of the layout of accessway can provide better privacy and larger backyard for each villa. The detailed modifications are:

- To change layout and driveway access of villas 26 to 43; and
- To change layout of villas 44 to 46.

Villas 26 and 27 will get access from the new internal road serving villas 18 to 25. Villas 28 to 43 will access from the new accessway connecting to the internal road. There is no change to the vehicular access of villas 44 to 46.

All modified 21 villas will have two private open spaces. The modified design provides better privacy comparing to the approved design containing clusters of buildings.

There is no change to the numbers of bedrooms and parking space.

The detailed changes are shown in the table below.

Item	Approved	Proposed
Site Area	4.05 ha	No change
Number of dwellings	76	No change
Number of car spaces	95	No change
Total internal floor area	9567m <sup>2</sup>	9772m <sup>2</sup>
Building site coverage	11336m <sup>2</sup>	12181m <sup>2</sup>
Roads and driveways	7150m <sup>2</sup>	7300m <sup>2</sup>
Total site coverage	18486m <sup>2</sup>	19481m <sup>2</sup>
Floor space ratio	0.236:1	0.241:1

The side setback to the eastern boundary adjoining No.390 Galston Road will be reduced from 15m to 10m. However, the impact to the adjoining site won't be increased given the relocations of the private open spaces to the north and south of the villas. The approved design has six backyards (villas 29, 30, 31, 38, 39, 40) facing east and occupying the 15m wide side setback area which will have more acoustic impact on the No.390 Galston.

The approved villas 29, 30, 38 and 39 located at the end of each accessway are difficult for vehicle access. Residents of villas 29 and 38 need to reverse precisely into their garages to avoid the private yard in front of the garage and another garage door located at one side. Residents of villas 30 and 39 need to reverse out towards other's garage door with great cautious to avoid collisions.

The proposed new design does not have any garages at the end of the accessway. It also provides 6m turning bay at the end to ensure all vehicles will be traveling in a forward direction.

### 3.2 Proposed Changes to Permanent Community Centre

The proposed modifications to the permanent community centre are for the purposes of complying with BASIX Certificate and Building Code of Australia.

The detailed changes are:

- To achieve NCC compliance, two exits are added to the basement discharging people to the road on the ground level.

- The dance floor on the ground level has been deleted to achieve acoustic requirements. A statement from the acoustic engineer is prepared to verify the changes and support the changes to the consent conditions 27B and 61B by installing acoustic fencing between the community centre and adjacent villas.
- A shading structure is added on the roof plan to comply with the thermo performance requirements.
- Other changes are made to the kitchen, coffee bar, toilets and bathrooms, and room layouts in the basement to improve accessibility.

### 3.3 Proposed Changes to Consent Conditions

The applicant seeks the consent to modify the terms of conditions 27B and 61B.

The detailed changes are coloured in red with reasons outlined below.

#### **27B. Acoustic Treatment and Certification Permanent Community Centre**

Acoustic treatment must be installed for the proposed community centre in accordance with the recommendations contained within the Acoustic Impact Assessment prepared by PKA Acoustic Consulting, dated 1 October 2020 ~~and its Addendum dated 16 February 20221. and the following requirements:~~

- ~~a) All windows to be fixed and inoperable within community centre to control noise emissions from the centre to nearby sensitive receivers.~~
- ~~b) All glazed elements of the community centre must be minimum Rw 34 and entry doors be minimum Rw 32. The Rw rating is required for the complete glazing and frame assembly. The window glass and frame system are to have a laboratory tested acoustic performance (in accordance with Australian Standard AS1191 Acoustics Method for laboratory measurement of airborne sound insulation of building elements) meeting the requirements.~~

Reasons: Additional Addendum to the report has been prepared by the acoustic engineer confirming the acoustic requirements can be achieved without the need of changing all windows to fixed windows in the permanent community centre. The alternative solution is to remove the dance floor and to impose management measures such as no live performances within the centre and time restrictions on the use of the centre.

#### **61B. Acoustic Certification**

On completion of all works and prior to the issue of an Occupation Certificate, the certifier is to be provided with a certificate from a qualified acoustic consultant

certifying that all acoustic works have been completed in accordance with the recommendations) contained within the Acoustic Impact Assessment - temporary community centre prepared by PKA Acoustic Consulting, dated 12 October 2020 (and its Addendum dated 16 February 2022), the Acoustic Impact Assessment prepared by PKA Acoustic Consulting, dated 1 October 2020 and this consent.

Reasons: because of the proposed changes to consent condition 27B.

#### 4.0 PLANNING CONTROLS

The proposed common building A has been assessed against the relevant planning controls which include:

- State Environmental Planning Policy 55 – Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- Hornsby Local Environmental Plan 2013
- Hornsby Development Control Plan 2013
- Seniors Living Policy – Urban Design Guidelines for Infill Development
- Compatibility Certificate

##### 4.1 State Environmental Planning Policy 55 – Remediation of Land

Environmental Site Assessment was prepared and approved under the approved DA. The previous site contamination has been remediated.

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

An updated BASIX Certificate has been prepared. The certificate confirms that the proposed development meets the NSW government's requirements for sustainability.

##### 4.3 State Environmental Planning Policy (Infrastructure) 2007

The detailed designs in relation to the infrastructure will not be affected by the modifications.

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

The following is an assessment of the proposal against relevant provisions.

Part/Clause	Provision	Proposal	Compliance
Part 2 Site-related requirements	Location and access to facilities, Bushfire prone land, Water and sewer,	The proposed modifications will not	Yes



	site compatibility criteria.	affect the assessment against this part.	
Part 3 Design requirements			
Clause 30	Site Analysis	Included in Site Analysis Plan.	Yes
Clause 31	Design of in-fill self-care housing	Considerations have been taken to the provisions of the Senior Living Policy: Urban Design Guideline for Infill Development.	Yes
Clause 33	Neighbourhood amenity and streetscape	The proposed modifications will not affect the previous assessment. The proposal does not change the location of the permanent community centre which is located at the centre of the village and won't be visible from both street frontages.	Yes
Clause 34	Visual and acoustic privacy	Updated acoustic addendum report is provided to address the acoustic impact from the operation of the permanent community centre.	Yes
Clause 35	Solar access and design for climate	All 21 modified villas have either main living area or private open space that is facing north and is considered an improvement comparing to the approved design.	Yes
Clause 36	Stormwater	Civil engineering plans have been updated.	Yes
Clause 37	Crime prevention	The proposed modifications will not affect the previous assessment.	Yes
Clause 38	Accessibility	The proposal meets all requirements for accessibility.	Yes
Clause 39	Waste management	Bins will be provided as required for general waste and recycling.	Yes
Part 4 Development standards to be complied with			

Clause 40	Development standards – minimum sizes and building height	The proposal fully complies with all development standards. The modified dwellings are single storey.	Yes
Clause 41	Standards for hostels and self-contained dwellings	The proposal complies with the requirements in schedule 3.	Yes
Part 5 Development on land adjoining land zoned primarily for urban purposes			
Clause 42	Serviced self-care housing	The relevant services will be available to residents as approved in original DA.	Yes
Clause 43	Transport services to local centres	No change	Yes
Clause 44	Availability of facilities and services	No change	Yes
Part 7 Development standards that cannot be used as grounds to refuse consent			
Clause 50	Standards that cannot be used to refuse development consent for self-contained dwellings	The proposal fully complies with the development standards. Dwellings are single storey and less than 8m in height; the FSR is 0.241:1 therefore less than 0.5:1; the proposed landscape area is greater than 30%; the proposed deep soil area is sufficient; more than 70% of dwellings achieve sufficient solar access; the proposal private private open space greater than 15m <sup>2</sup> ; the proposal complies with the car parking requirements.	Yes
Schedule 3 Standards concerning accessibility and useability for hostels and self-contained dwellings			
Clause 2	Siting standards	The proposal will not affect the previous assessment.	Yes
Clause 3	Security	The proposal does not change the DA approved design.	Yes
Clause 4	Letterboxes	The proposal does not change the DA approved design.	Yes

Clause 5	Private car accommodation	All car parking requirements have been met by the design.	Yes
Clause 6	Accessible entry	All entries comply with AS4299.	Yes
Clause 7	Interior: general	All doorways and openings comply with this requirement.	Yes
Clause 8	Bedroom	The proposal is designed to satisfy these requirements.	Yes
Clause 9	Bathroom	The proposal is designed to satisfy these requirements.	Yes
Clause 10	Toilet	Accessible toilets have provided as required.	Yes
Clause 11	Surface finishes	Proposal will include non-slip surfaces where necessary.	Yes
Clause 12	Door hardware	Proposal will include door handles as required under this clause.	Yes
Clause 13	Ancillary items	Proposal will include switches as required under this clause.	Yes
Clause 14	Application of standards in this Part	Noted	Noted
Clause 15	Living room and dining room	The proposal is designed to satisfy these requirements.	Yes
Clause 16	Kitchen	The proposal is designed to satisfy these requirements.	Yes
Clause 17	Access to kitchen, main bedroom, bathroom and toilet	N/A	N/A
Clause 18	Lifts in multi-storey buildings	N/A	N/A
Clause 19	Laundry	The proposal is designed to satisfy these requirements.	N/A
Clause 20	Storage for linen	The proposal is designed to satisfy these requirements.	Yes
Clause 21	Garbage	The bins will be stored in garage.	Yes

#### 4.5 Hornsby Local Environmental Plan 2013

The LEP is the primary environmental planning instrument relating to the proposed development. The aims of the LEP is as follows:

- 1) This Plan aims to make local environmental planning provisions for land in Hornsby 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 facilitate development that creates:
    - (i) progressive town centres, thriving rural areas and abundant recreation spaces connected by efficient infrastructure and transport systems, and
    - (ii) a well-planned area with managed growth to provide for the needs of future generations and people enriched by diversity of cultures, the beauty of the environment and a strong economy,
  - b) to guide the orderly and sustainable development of Hornsby, balancing its economic, environmental and social needs,
  - c) to permit a mix of housing types that provide for the future housing needs of the community near employment centres, transport nodes and services,
  - d) to permit business and industrial development that meets the needs of the community near housing, transport and services, and is consistent with and reinforces the role of centres within the subregional commercial centres hierarchy,
  - e) to maintain and protect rural activities, resource lands, rural landscapes and biodiversity values of rural areas,
  - f) to provide a range of quality passive and active recreational areas and facilities that meet the leisure needs of both the local and regional community,
  - g) to facilitate the equitable provision of community services and cultural opportunities to promote the well being of the population of Hornsby,
  - h) to protect and enhance the scenic and biodiversity values of environmentally sensitive land, including bushland, river settlements, river catchments, wetlands and waterways,
  - i) to protect and enhance the heritage of Hornsby, including places of historic, aesthetic, architectural, natural, cultural and Aboriginal significance,
  - j) to minimise risk to the community in areas subject to environmental hazards, including flooding and bush fires.

It is submitted that the proposed modification application is not inconsistent with these objectives.

The Subject site is zoned RU2 and adjoins land primarily for urban purposes. It is determined in the Site Compatibility Certificate that the site is suitable for the development for the purposes of seniors housing.

In terms of an updated assessment against the LEP, the following relevant clauses have been identified as being relevant to the modification application and have therefore been considered.

Principal Development Standards:			
Standard	Permitted	Proposed	Compliance
<b>4.1 Minimum subdivision lot size</b>	N/A	N/A	N/A
<b>4.2 Rural subdivision</b>	Not adopted	N/A	N/A
<b>4.3 Height of building</b>	10.5 metres	Less than 8 metres	Yes
<b>4.4 Floor space ratio</b>	N/A	0.241:1	N/A
Part 5: Miscellaneous Provisions			
Provision	Intent of Requirement		Compliance
<b>5.1 Relevant acquisition authority</b>	N/A		N/A
<b>5.1A Development on land intended to be acquired for a public purpose</b>	N/A		N/A
<b>5.2 Classification and reclassification of public land</b>	N/A		N/A
<b>5.3 Development near zone boundaries</b>	The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone		The site adjoins land primarily for urban purposes. Consideration has been taken when issuing the Site Compatibility Certificate.
<b>5.4 Controls relating to miscellaneous permissible uses</b>	N/A		N/A
<b>5.5 Development within the coastal zone</b>	N/A		N/A
<b>5.6 Architectural roof design</b>	N/A		N/A
<b>5.7 Development below mean high water mark</b>	N/A		N/A
<b>5.8 Conservation of fire alarms</b>	N/A		N/A
<b>5.10 Heritage conservation</b>	N/A		N/A
<b>5.11 Bush fire hazard reduction</b>	N/A		N/A



<b>5.12 Infrastructure development and use of existing buildings of the Crown</b>	N/A	N/A
<b>5.13 Eco-tourist facilities</b>	N/A	N/A
<b>Part 6: Relevant Additional Local Provisions</b>		
<b>Provision</b>	<b>Intent of Requirement</b>	<b>Compliance</b>
<b>6.1 Acid sulfate soils</b>	N/A	N/A
<b>6.2 Earthworks</b>	N/A	Yes The proposal involves minor excavation only.
<b>6.3 Flood planning</b>	N/A	N/A
<b>6.4 Terrestrial biodiversity</b>	N/A	N/A
<b>6.5 Limited development on foreshore area</b>	N/A	N/A
<b>6.6 Restrictions on certain development in Dural Village</b>	N/A	N/A
<b>6.7 Location of sex services premises</b>	N/A	N/A
<b>6.8 Design excellence</b>	N/A	N/A
<b>6.9 Dual occupancies (attached) on land in certain rural zones</b>	N/A	N/A
<b>Relevant Schedules</b>		
<b>Schedule</b>	<b>Intent of Requirement</b>	<b>Compliance</b>
<b>Schedule 1: Additional permitted uses</b>	N/A	N/A
<b>Schedule 2: Exempt development</b>	N/A	N/A
<b>Schedule 3: Complying development</b>	N/A	N/A
<b>Schedule 4: Classification and reclassification of public land</b>	N/A	N/A
<b>Schedule 5: Environment heritage</b>	N/A	N/A

There are no other provisions relevant to the proposal.

#### 4.6 Hornsby Development Control Plan 2013

The following parts of the Hornsby DCP 2013 are the most relevant in the case of the proposed modification and have been considered.

<b>Part 2 Rural</b>		
<b>Control</b>	<b>Relevant requirement</b>	<b>Compliance</b>
<b>2.1.1 Scale</b>	Height – 10.5m Roof – a maximum pitch of 35 degree	Height – less than 8m Roof – pitch of 21 degree

	Site coverage – on merit	Site coverage – 48.1%
<b>2.1.2 Setbacks</b>	Front setback – 30m to designated roads  Side boundary – 10m Rear boundary – 15m	Yes Front setback – 30m to Galston Road and Mid Dural Road Side boundary – 10m Rear boundary – 15m
<b>2.1.3 Landscaping</b>	To maintain natural features, topography and vegetation on site; setback areas should be landscaped; vehicle crossing should be located to preserve natural vegetation; high, solid fences should be avoided.	Yes Landscape Plan has been updated to show the proposed changes. Additional landscape sections have been prepared to support the reduced the side setback.
<b>2.1.4 Open space</b>	Minimum private open space 24m <sup>2</sup> with minimum 3m dimension	Yes Front yard 20.54m <sup>2</sup> (2.65m x 7.75m) Backyard 42.95m <sup>2</sup> (3.50m x 12.27m)
<b>2.1.5 Vehicle access and parking</b>	Car parking should be provided behind the front building line; a paved driveway should be provided; a driveway should be setback a minimum 2m from side boundaries.	Yes The proposed new accessway complies with this clause.
<b>2.1.6 Design details</b>	Development that contributes positively to the character of the rural area; Building sizes, styles and forms that relate to the character of the area	Yes The modified design maintains the character of approved design.
<b>Part 1 General</b>		
<b>Control</b>	<b>Relevant requirement</b>	<b>Compliance</b>
<b>1C.1 Natural environment</b>		
<b>1C.1.1 Biodiversity</b>	Development that provides for the conservation of biodiversity including threatened species and populations, endangered ecological communities, remnant indigenous trees, regionally and locally significant terrestrial and aquatic vegetation; Development that maintains habitat for native wildlife and wildlife	Yes The proposed modifications will not affect the approved Vegetation Management Plan.

	corridors to provide for the movement of fauna species.	
<b>1C.1.2 Stormwater management</b>	Development that protects waterways from erosion, pollution and sedimentation, and maintains or improves water quality and aquatic habitats; Water management systems that minimise the effects of flooding and maintains natural environmental flows.	Yes Stormwater design for internal road and accessway has been updated to show the changes.
<b>1C.1.3 Watercourses</b>	N/A	N/A
<b>1C.1.4 Earthworks and slope</b>	Development that is designed to respect the natural landform characteristics and protects the stability of land; Development that limits landform modification to maintain the amenity of adjoining properties and streetscape character.	Yes The proposed building design involves minor excavation only.
<b>1C.2 Built environment</b>		
<b>1C.2.1 Transport and parking</b>	Development that manages transport demand around transit nodes to encourage public transport usage; Car parking and bicycle facilities that meet the requirements of future occupants and their visitors; Development with simple, safe and direct vehicular access.	Yes No change to traffic impact. An updated Traffic and Parking Report assessing the new accessway has been provided.
<b>1C.2.2 Accessible design</b>	N/A	N/A
<b>1C.2.3 Waste management</b>	Development that maximises re-use and recycling of building materials; Waste storage and collection facilities that are designed to encourage recycling, located and designed to be compatible with the streetscape, accessible, clean and safe for users and collectors.	Yes The proposal will not affect the approved Waste Management Plan. Garbage bins will be stored in the garage.
<b>1C.2.4 Effluent disposal</b>	Sewage is disposed of in a manner that minimises	Yes

	impacts on the natural and built environment and public health.	The proposal will not affect the approved Sewer Design and disposal arrangement.
<b>1C.2.5 Noise and vibration</b>	Development designed and managed to minimise noise and vibration impacts on the occupants of residential dwellings and other noise sensitive land uses.	Yes The proposal will not affect the previous assessment.
<b>1C.2.6 Air quality</b>	N/A	N/A
<b>1C.2.7 Crime prevention</b>	Development designed to reduce crime risk and minimise opportunities for crime.	Yes
<b>1C.2.8 Building sustainability</b>	Development that incorporates environmentally sustainable design and construction.	Yes BAISX certificates have been provided for villas 26 to 46.
<b>1C.2.9 Landscaping</b>	Landscaping that integrates the built form with the locality and enhances the tree canopy; Landscaping that improves the environmental performance of the development.	Yes Updated Landscape Plan has been provided.
<b>1C.2.10 Services and lighting</b>	Development that provides necessary services to cater for future occupants; Development that integrates required services in building and site design to minimise impacts on the streetscape.	Yes The proposal will not affect the services arrangement and lighting design.
<b>1C.2.11 Signage</b>	N/A	N/A
<b>1C.2.12 Avoiding isolated sites</b>	N/A	N/A
<b>1C.3 Hazards</b>		
<b>1C.3.1 Bushfire</b>	N/A	N/A
<b>1C.3.2 Flooding</b>	N/A	N/A
<b>1C.3.3 Acid sulfate soils</b>	N/A	N/A
<b>1C.3.4 Land contamination</b>	Development that remediates contaminated land for the purpose of reducing the risk of harm to human health and the environment.	Yes The proposal will not affect the previous assessment.

There are no other aspects of the DCP that are specifically relevant to the proposal or that require detailed consideration.

#### 4.7 Seniors Living Policy – Urban Design Guidelines for Infill Development

The following parts of the Guidelines are the most relevant in the case of the proposed modification and have been considered.

Control	Relevant requirement	Compliance
<b>1. Responding to context</b>	Analysis of neighbourhood character including Street layout and hierarchy; Block and lots; Build environment; Trees.	Yes The proposed modifications will not affect the approved Site Analysis. No change is proposed to scale and height, existing streetscape and tree retention.
<b>2. Site planning and design</b>	Built form; Trees, landscaping and deep soil zones; Parking, garaging and vehicular circulation.	Yes Updated Landscape Plan is provided to show the proposed changes. No change is proposed to parking and vehicular circulation. All SEPP controls are fully complied with.
<b>3. Impacts on streetscape</b>	Built form; Trees, landscaping and deep soil zones; Residential amenity; Parking, garaging and vehicular circulation.	Yes The proposal will not affect the previous assessment of streetscape.
<b>4. Impacts on neighbours</b>	Built form; Trees, landscaping and deep soil zones; Residential amenity; Parking, garaging and vehicular circulation.	Yes The side setback is reduced from 15m to 10m. However, the revised layout has no backyard facing the adjoining property No.390 Galston Road which does not increase the impact. The approved Landscape Plan contains dense screen planting along the setback areas which will largely block the view of



		community centre from both properties.
<b>5. Internal site amenity</b>	Built form; Trees, landscaping and deep soil zones; Residential amenity; Parking, garaging and vehicular circulation.	Yes The proposal provides better internal site amenity. All 21 villas will enjoy better privacy and private open space.

#### 4.8 Compatibility Certificate

Below is an assessment against the Site Compatibility Certificate.

Control	Compliance
94 self contained unit (serviced self care housing) of single storey construction.	Yes The proposal does not increase the number of dwellings. All self contained units are of single storey construction.
On site services including meals, cleaning, personal and medical care and nursing.	Yes No change to previous services arrangement.
A Community facility.	Yes No change is proposed to temporary or permanent community centres.
1. Development consisting of one storey as proposed.	Yes
2. Compliance with at least the standards in clause 50 (b), (c), (d) and (e) of the SEPP covering density and scale, landscaped area, deep soil zones, and solar access.	Yes Fully complies with.
3. Private open space is to be provided for each dwelling at least to the standard of clause (f) of the SEPP.	Yes
4. Council being satisfied that the development will be retirement village, as required by clause 17(2) of the SEPP. Management mechanisms for the services to be provided are to be to the satisfaction of Hornsby Council.	Yes No change.
5. The final number of dwellings (not to exceed 94) to be determined taking into account Council's Development Control Plan and other formal policies, such as setbacks to boundaries, on site effluent disposal, drainage and the like, and the open space and landscaping requirements of the SEPP.	Yes No change.
6. Siting of dwellings to maximise accessibility to services in Galston village and to public transport.	Yes No change.

7. Negotiation with Hill Bus before submission of a development application on the provision of a bus stop to service the proposed development.	Yes No change.
8. Demonstration of adequate infrastructure for, or treatment of, wastewater and siting of any on-site treatment to the rear of the site, including further discussions with Sydney Water re. the availability of reticulated sewer.	Yes No change.
9. A buffer/setback to be provided from all boundaries in accordance in accordance with Council's Rural Lands Development Control Plan.	Yes The side setback is reduced from 15m to 10m. However, the revised layout has no backyard facing the adjoining property No.390 Galston Road which does not increase the impact.
10. The size of the community facility to be a minimum of 300 sq. metres and include common dining and recreational areas.	Yes No change
11. Any development application should consider potential contamination issues as the result of previous uses on the site.	Yes No change.

## 5.0 ENVIROMENTAL PLANNING ASSESSMENT

An assessment of the proposal has been undertaken in accordance with the statutory requirements of the EP&A Act. The following assessment against Section 4.15 of the EPA Act has been undertaken.

### 5.1 Section 4.56 Modification by consent authorities of consents granted by the Court

The following provides comment on the relevant provisions of Section 4.56 of the Act as shown in **bold** and *italics*.

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

***(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and...***

In *Vacik Pty Ltd v Penrith City Council* (unreported 1992) the question of substantially the same development was considered by Commissioner Stein J. and in particular the meaning of the word ‘substantially’. In his opinion ‘substantially’ is taken in the context to mean ‘essentially or materially or having the same essence’.

In *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) the NSWCA recognised that a modified development must be different in some respect to the approved development and used the formulation that ‘modify’ meant ‘to alter without radical transformation’.

In *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 where at paragraphs 55 and 56, Bignold J described the process for consideration of a proposed modification of development as follows:

“55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development.

56. The comparative task does not merely involve a comparison of the physical features or components of the development as approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."

In more recent times the Land and Environment Court has restated that council's power to modify a development consent is a power "to alter without radical transformation" (refer *DA & RA Surry Hills Pty Ltd v City of Sydney Council* [2015] NSWLEC 1307).

When considering the question of 'substantially the same development' the Court considers a qualitative and quantitative analysis between the development as originally consented to and the proposed modified development is required to determine if the modified development is substantially the same development as the original consented development application. The Court has also emphasised that a change to an 'essential feature' of a development may result in the development not being considered 'substantially the same'.

Quantitatively, the modified development remains substantially the same because:

- The number of the villas and the number of residents remain the same.
- The number of car parking spaces remain the same.
- The bulk and scale of the building is consistent with the approved development, in particular
  - there is no change to the overall height of the building; and
  - there is no increase in number of bedrooms.
- The building footprint is generally of the similar size compared with the approved development.
- The modified development continues to meet the following relevant quantitative requirements for senior living development as prescribed in State Environmental Planning Policy (Senior Living) 2004 and other relevant controls.
- There is no impact on such issues as waste, servicing, vehicle access.

Qualitatively, the modified development remains substantially the same because:

- The modifications involve no new use. The 'essence' of the development remains an independent living retirement village with common facilities.

- The impacts from overshadowing, overlooking are not increased or modified so as to impact further on adjoining neighbours or the amenity of the locality.
- The proposed modifications do not introduce any new impacts and will not increase the severity of known impacts.
- The proposed modifications do not detrimentally impact on how the design of the modified villas continues to be compatible with the character of the local area.

Having due consideration to a qualitative and quantitative analysis between the development as originally consented to and subsequently amended and the proposed modified development, there is a very clear and compelling argument that the proposed modifications will not change the most important/essential parts of the proposed development such as use, scale, bulk and environmental impacts.

The proposed modification will not result in a development that is a “radical transformation” from the development as originally consented. While there will always be some qualitative effects from the proposed modification, these effects are relatively minor and do not impact on the fundamental characteristics and essence of the development as primarily a senior living development.

## 5.2 Section 4.15(1)(a)(i) - Environmental Planning Instruments

The relevant environmental planning instruments have been considered earlier in this report.

The proposal is permissible with consent and is considered satisfactory when assessed against the relevant requirements.

## 5.3 Section 4.15(1)(a)(ii) - Draft Environmental Planning Instruments

There are no known drafts Environment Planning Instruments applicable to the subject site.

## 5.4 Section 4.15(1)(a)(iii) - Development Control Plan

The relevant development control plans have been considered earlier in this report.



#### 5.5 Section 4.15(1)(a)(iia) - Planning Agreement or Draft Planning Agreement Entered Into Under Section 7.4

There are no known planning agreements that apply to the site or development.

#### 5.6 Section 4.15(1)(a)(iv) - Regulations

There are no sections of the regulations that are relevant to the proposed development at this stage.

#### 5.7 Section 4.15(1)(b) - Impacts of The Development

The impacts have been considered earlier in this report. It is concluded no significant will be generated from this modification application.

##### **5.7.1 Accessibility**

Special consideration is given to address access issue. The proposed internal layout is similar to the other villas in the village. The accessibility has been improved with the simpler layout. It is safe and more suitable for older people or people with a disability.

All dwellings have a continuous path of travel to community centre. An Access Report has been prepared to confirm the compliance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and relevant Australia Standards.

##### **5.7.2 Solar Access**

The amended layout enables all villas to have a 2.65m wide front yard and a 3.50m wide back yard with one of them facing north. 11 villas have their front yards and living rooms facing room, and the rest 10 villas have their backyard facing north.

##### **5.7.3 Traffic and Parking**

The proposal does not increase traffic generation and does not change the number of parking space.

The proposed new design enables easy car manoeuvres and does not have any garages at the end of the accessway. It also provides 6m turning bay at the end to ensure all vehicles will be traveling in a forward direction.

##### **5.7.4 Side Setback**

It is proposed to reduce the side setback to the eastern boundary from 15m to 10m which complies with the requirements in the Hornsby DCP.

However, the impact to the adjoining site won't be increased given the relocations of the private open spaces to the north and south of the villas. The approved design has six backyards (villas 29, 30, 31, 38, 39, 40) facing east and occupying the 15m wide side setback area which will have more acoustic impact on the No.390 Galston.

#### **5.7.5 Acoustic Impact**

Additional Addendum to the report has been prepared by the acoustic engineer confirming the acoustic requirements can be achieved without the need of changing all windows to fixed windows in the permanent community centre. The alternative solution is to remove the dance floor, impose management measures such as no live performances within the centre and time restrictions on the use of the centre, and install the acoustic fencing between the community centre and villas.

#### **5.8 Section 4.15(1)(c) - Site Suitability**

The proposal is consistent with the Site Compatibility Certificate. For the reasons outlined in this report the site is considered suitable for this development proposal.

#### **5.9 Section 4.15(1)(d) – Submissions**

Council will undertake a notification process in accordance with its controls and policies. We welcome the opportunity to provide additional information in response to those.

#### **5.10 Section 4.15(1)(e) - The Public Interest**

Given the type of development, its compliance with the planning controls, how the objectives are satisfied and the suitability of the site it is considered that the public interest would not be jeopardised as a result of this development.

#### 5.11 Section 4.15(3A) - Development Control Plans

The relevant development control plans have been considered earlier in this report.

## 6.0 CONCLUSION AND RECOMMENDATION

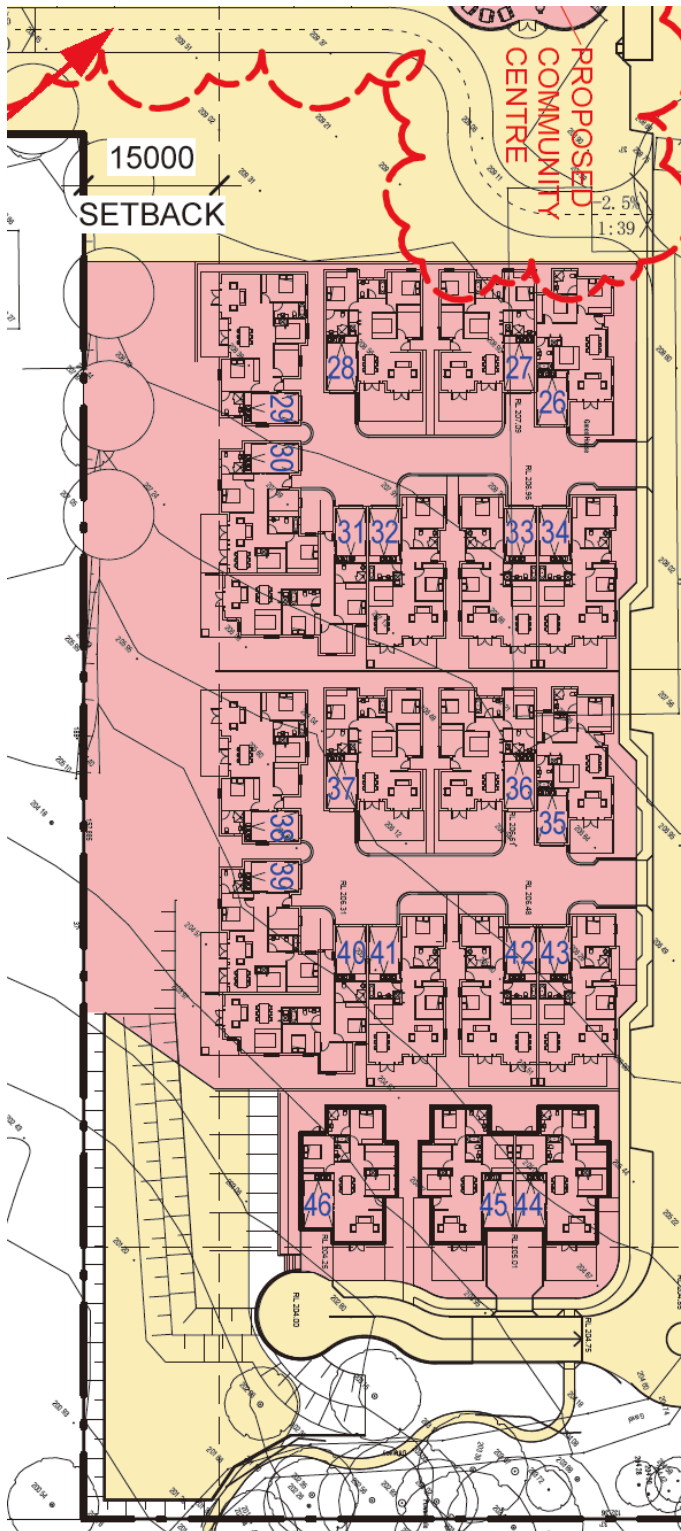
The proposed modifications have been assessed against the requirements of the Hornsby LEP and SEPP and is considered to represent a form of development that is acceptable.

The proposed modifications would not result in any unacceptable impact on the site and surrounding area. The site is considered suitable for a use of this nature and is consistent with what have been previously approved on the subject site.

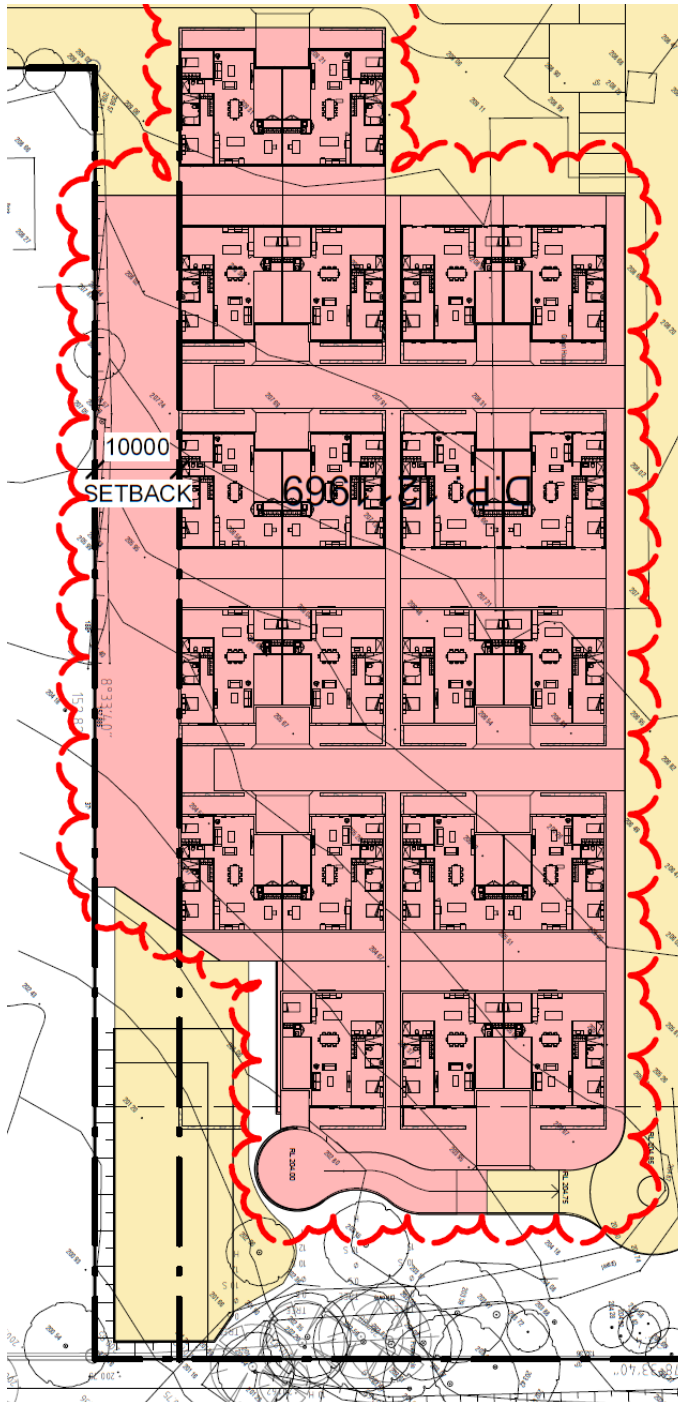
An assessment against section 4.15 of the EPA Act has not resulted in any significant issues arising.

Accordingly, it is recommended that the proposed modifications to the housing for older people on the site be approved.

## APPENDIX A



Approved Villa 26 to Villa 46

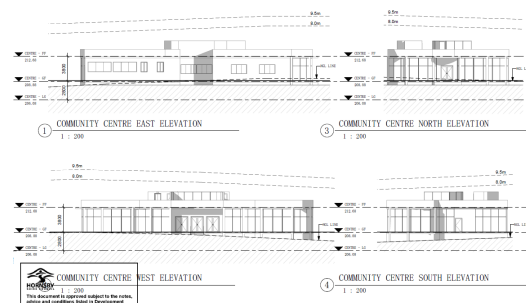
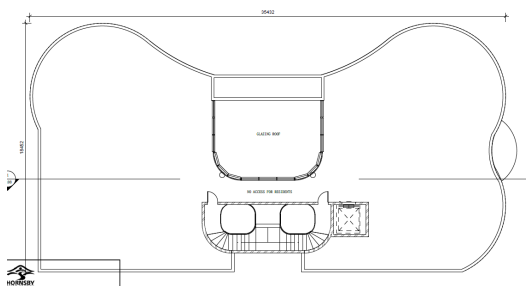
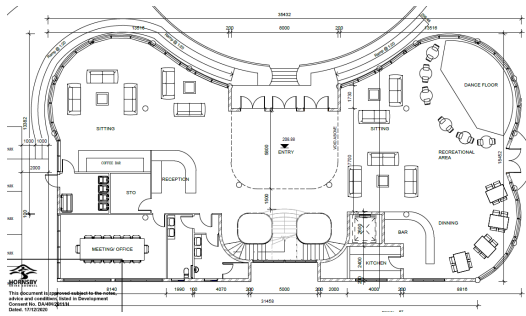
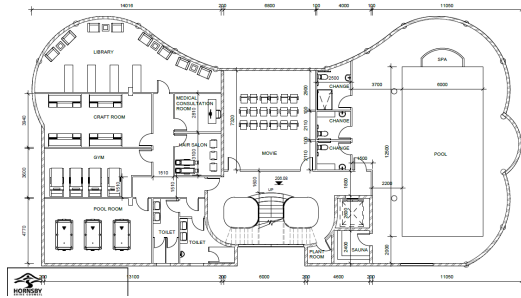


Proposed Villa 26 to Villa 46

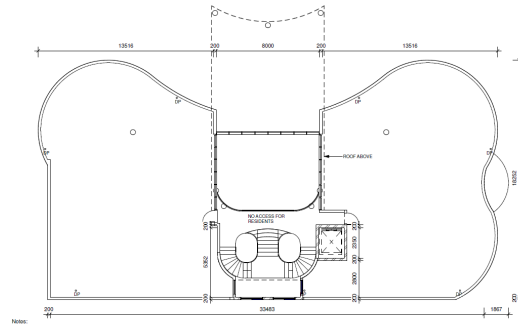
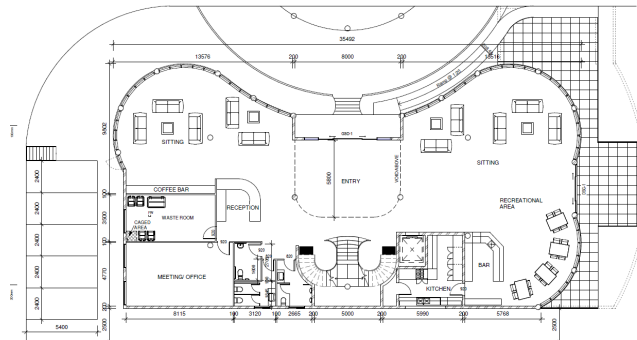
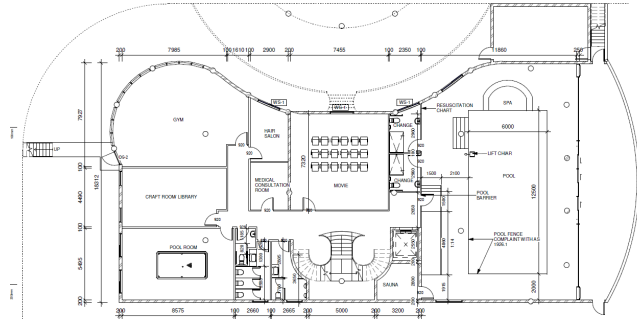
## APPENDIX B



## APPROVED



## PROPOSED



Notes:  
Designs in accordance with ASS200-3, to connect to approved system.

