



## COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION SYDNEY NORTH PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PSSNH-320 - DA/394/2015/E
<b>PROPOSAL</b>	Section 4.55(2) application - modification to Independent Living Units - Buildings A and B - Stage 3 of the seniors living development
<b>ADDRESS</b>	Lot 100 DP 1259619, No. 35 Pacific Highway, Wahroonga
<b>APPLICANT</b>	Catholic Healthcare Limited
<b>OWNER</b>	Catholic Healthcare Limited
<b>MOD LODGEMENT DATE</b>	27 June 2022
<b>ORIGINAL DA DETERMINATION DATE</b>	2 December 2015
<b>APPLICATION TYPE</b>	Section 4.55(2) Modification Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Section 4.55(2) - original cost of works is over \$30 million
<b>CIV</b>	\$119,037,600 - Unchanged
<b>CLAUSE 4.6 REQUESTS</b>	N/A
<b>KEY SEPPS/LEP/DCP</b>	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy (Housing) 2021</li> <li>State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>Hornsby Local Environmental Plan 2013</li> <li>Hornsby Development Control Plan 2013</li> </ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	One

<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<ul style="list-style-type: none"> <li>• DA/394/2015/E - L-RFI and Amended S4.55 Application - 35 Pacific Highway, Wahroonga</li> <li>• DA/394/2015/E - Amended Design Response to RFI - 35 Pacific Highway, Wahroonga</li> <li>• DA/394/2015/E - Amended Architectural Drawings - 35 Pacific Highway, Wahroonga (26/10/22)</li> <li>• DA/394/2015/E - Architectural Drawings - 35 Pacific Highway, WAHROONGA NSW 2076 (21/03/22)</li> <li>• DA/394/2015/E - Amended Landscape Drawings - 35 Pacific Highway, Wahroonga</li> <li>• DA/394/2015/E - Amended Waste Management Plan - 35 Pacific Highway, Wahroonga</li> <li>• DA/394/2015/E - Stormwater Management Response - 35 Pacific Highway, Wahroonga</li> <li>• DA/394/2015/E - BCA Report - 35 Pacific Highway, WAHROONGA NSW 2076</li> <li>• DA/394/2015/E - BASIX Certificate - 35 Pacific Highway, WAHROONGA NSW 2076</li> <li>• DA/394/2015/E - Arboricultural Impact Report - 35 Pacific Highway, WAHROONGA NSW 2076</li> <li>• DA/394/2015/E - Noise Impact Assessment - 35 Pacific Highway, WAHROONGA NSW 2076</li> <li>• DA/394/2015/E - Access Report - 35 Pacific Highway, WAHROONGA NSW 2076</li> <li>• DA/394/2015/E - Survey - 35 Pacific Highway, WAHROONGA NSW 2076</li> <li>• DA/394/2015/E - Statement of Environmental Effects S4.55(2) - 35 Pacific Highway Wahroonga_PAN-235878</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	N/A
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	8 March 2023
<b>PLAN VERSION</b>	Various - See Condition 2 for full list of approved documentation
<b>PREPARED BY</b>	Madeleine Bayman
<b>COI DECLARATION</b>	No conflict of interest declared
<b>DATE OF REPORT</b>	14 February 2023

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## EXECUTIVE SUMMARY

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Council is in receipt of a Section 4.55(2) application from Catholic Health Care Ltd seeking approval for design modifications to an approved seniors living development, specifically Stage 3 of the development for the construction of Buildings A and B.

The original development application No. DA/359/2015 was approved by the Joint Regional Planning Panel (Sydney West Region) on 2 December 2015, for the demolition of existing structures and the erection of a residential care facility for 122 residents, five independent living unit buildings varying in height from 3 to 5 storeys containing 168 dwellings and 259 car parking spaces, community facilities, café and associated works. The development was approved in three stages. Stages 1 and 2 for the construction of the residential care facility and Buildings C, D and E have been completed.

The application proposes design changes to the two independent living unit buildings identified as Buildings A and B. The most significant change involves the increase in the height of the buildings from 5 to 6 storeys. Other design changes to the units include a slight shift in orientation of the building to improve the design and functionality of the development and increase the setbacks to retained trees. The proposal would decrease the number of units from 168 to 167 on the site with an increase in 2-3 bedroom units due to market demand.

The original application was lodged and determined having regard to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HS&PD) which was repealed by State Environmental Planning Policy (Housing) 2021 (Housing SEPP). In most relevant aspects, the provisions are the same. The proposal complies with the design quality principles of State Environmental Planning Policy 65 Design Quality of Residential Apartment Development. The proposal is generally consistent with the prescriptive measures within the Apartment Design Guide. The proposal would not alter the original development's compliance with any other environmental planning instruments.

The development as modified is substantially the same development for which consent was originally granted. The design changes proposed under this consent are generally minor and would not significantly intensify the development.

The modified proposal has been publicly exhibited in accordance with the Hornsby Development Control Plan 2013. One submission from one nearby property owner was received. The issues raised in the submissions primarily relate to amenity impacts to do with privacy, noise and solar access. The matters raised in the submissions have been reviewed and do not warrant refusal of the application.

The original development was determined by the Joint Regional Planning Panel RPP (now Sydney North Planning Panel) due to the Capital Investment Value of the development. Regional panels are also responsible for determining applications to modify a consent for regionally significant development.

The application is recommended for approval, subject to revised conditions.

## RECOMMENDATION

THAT pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, Development Application No. DA/394/2015 for a seniors housing development comprising a residential care facility with 122 beds and five buildings containing a total of 168 independent living units at Lot 3 DP 1122662 No. 32 McAuley Place, Wahroonga be amended as detailed in Schedule 1 of this report.

## 1. THE SITE AND LOCALITY

### 1.1 The Site

The site has an area of 2.891 hectares and is located on the western side of the Pacific Highway and the south-eastern side of McAuley Place, Wahroonga (refer to aerial image in Figure 1 below). The northern end of the site is gently sloping from the Pacific Highway to the south-west. The central part of the site is relatively flat, and the southern end rises to a high point adjacent to the Pacific Highway. This area experiences slopes of approximately 10%.

At the time of the original application in 2015, the site contained a nursing home and hostel comprising 73 beds, 35 independent living units, three administration buildings housing the Mercy Community Care, administrative offices, chapel, day care, therapy centre and a day care respite centre. Existing development has resulted in the demolition of the majority of buildings on the site and the 122 bed residential care facility has been constructed in accordance with the consent for DA/359/2015.

The site contains a large number of trees, in particular around the perimeter, including remnant Blue Gum High Forest and trees that are listed within the HLEP as being of heritage value.

A number of restrictions exist on the title of the site, including an easement for support along a portion of the Pacific Highway frontage, a right-of-way off McAuley Place associated with access to an existing substation, a drainage easement and overland flow path.

The site is no longer identified as bushfire prone.

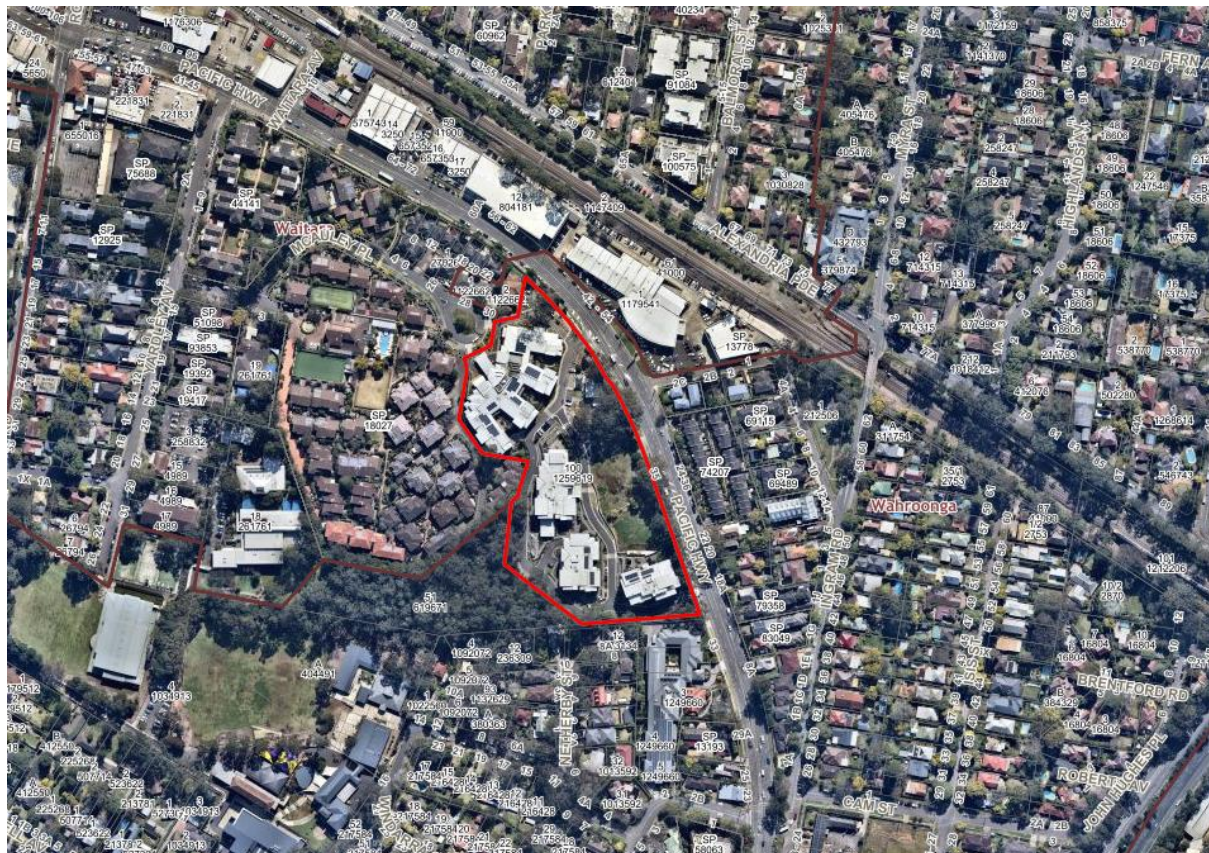


Figure 1: Nearmap Aerial image - 21 August 2022

## 1.2 The Locality

The site is located 1.2km from the Hornsby Town Centre and approximately 300m from Waitara Station. The site is located within an area containing a variety of uses, including housing for the aged to the north-west and west, bushland to the west, low density one and two storey dwellings to the south, a three storey residential aged care facility to the southeast, two storey multi-unit housing developments to the east and motor showrooms to the north-east.

## 2. THE PROPOSAL AND BACKGROUND

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### 2.1 The Proposed Modification

The proposal is for the modification of Independent Living Units (ILUs) within Buildings A and B associated with Stage 3 of the approved development. A summary of changes is outlined as follows:

#### *Building A:*

- The orientation of this building has been adjusted to improve the built form's environmental performance, allowing sufficient building separation from the existing Building E, addressing privacy concerns, and fulfilling the requirements of the Apartment Design Guide. This move creates greater space between Buildings A and E, providing more area for generous landscaped open space, amenity and activity space. The rotated design also enables reduced shadow impacts to the existing Buildings D and E and provides a consistency of building bulk, height and scale across the development.
- The number of storeys has increased from 5 to 6 with the height of the building to the architectural roof feature increasing by 850mm above which is a localised plant area and lift overrun.
- The GFA of the building has increased by 401 square metres.
- Dimensions of the building footprint have marginally changed with no significant increase.
- Minimum setback from Pacific Highway boundary has increased from 7.2 metres to 9.7 metres with building rotated closer to the boundary at its southern end.
- The number of units has been reduced from 40 to 39 and the unit mix has changed to increase the number of 2 and 3 bedroom apartments to meet client expectations.
- Introduction of wintergardens on the eastern façade to manage noise from Pacific Highway.
- Changes to internal apartment layout.

#### *Building B:*

- The orientation of this building remains generally as approved.
- The number of storeys has increased from 5 to 6 with use of the undercroft area for resident support facilities such as function rooms and hair salon.
- The height of the building to the architectural roof feature has increased by 1.85 metres above which is a localised plant area and lift overrun.
- The GFA of the building has increased by 803 square metres.
- Dimensions of the building footprint have marginally changed with no significant increase.



- Building setback from Pacific Highway boundary has marginally increased from 5.8 metres to 6.5 metres.
- The unit mix has changed to increase the number of 2 and 3 bedroom apartments to meet client expectations.
- Introduction of wintergardens on the eastern façade to manage noise from the Pacific Highway.
- Changes to internal apartment layout.

The proposed modifications are summarised in Table 1 below:

**Table 1: Key Development Data**

Control	Proposal
Site area	27,390m <sup>2</sup>
GFA	30,568.6m <sup>2</sup>
FSR (retail/residential)	1.11:1
Clause 4.6 Requests	N/A
No. of apartments	167
Max. Height	Max. RL 205.800 Building B (approx. 26m)
Car Parking spaces	105 for Buildings A and B (95 required)

A summary of the modified building is outlined as follows:

Building	Storeys	Height	No. of Units	GFA (m <sup>2</sup> )
A	6 storeys (+1)	RL 199.800 (+1.27m roof feature) RL 201.600 (+3.07m lift overrun)	39 units (-1)	4,855m <sup>2</sup> (+401m <sup>2</sup> )
B	6 storeys (+1)	RL 204.000 (+2.27m roof feature) RL 205.800 (+4.03m lift overrun)	40 units	5,257m <sup>2</sup> (+803m <sup>2</sup> )
C (no change)	6 storeys	RL 208.123	38 units	4,21.5m <sup>2</sup>
D (no change)	4 storeys	RL 196.708	32 units	3,612m <sup>2</sup>
E (no change)	3 storeys	RL 191.108	18 units	2039.2m <sup>2</sup> (residential) 1,175m <sup>2</sup> (community facilities)
Total			167 units	30,568.6m <sup>2</sup> FSR = 1.11:1 (previously 1.015:1)

Wintergardens are proposed for the balconies closer to the Pacific Highway to provide greater noise attenuation. The ability to provide and close windows to the balcony has been incorporated into the

design of Buildings A and B in response to feedback from residents during focus group sessions on the design of the Stage 2 buildings (Buildings C, D and E).

Vehicular access to Buildings A and B from the internal street remains generally the same, providing a single point of access to basement car parking levels under Buildings A and B, with an additional 13 car spaces with the lower ground floor of Building B connecting with Building C basement car parking area. The location of the driveway access from the internal road is moved slightly more to the northern edge of Building A, allowing for an improved relationship with residence above with a terrace and planter as visual barrier to car headlights.

Basement parking has been increased from 80 spaces to 105 spaces. There is no change to the internal road layout and on street parking. One additional car parking basement level is proposed.



Figure 2: Building A - Ground Floor/ Building B Lower Ground Floor Plan prepared by Group GSA - identifies approved building envelope in red and vehicular connection to existing building C

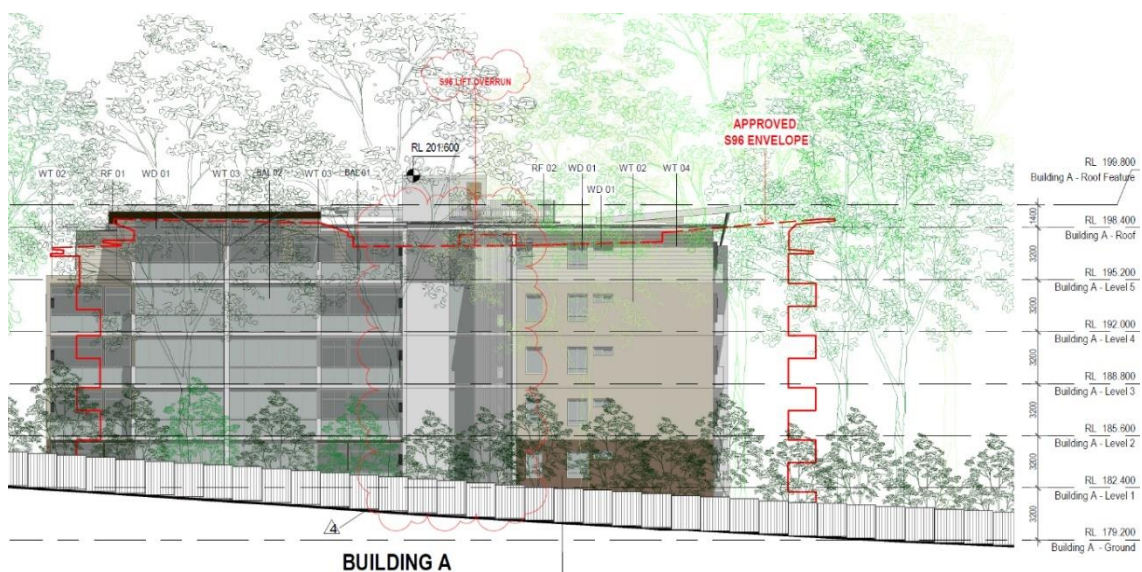


Figure 3: Building A - Eastern Elevation Plan prepared by Group GSA - identifies approved building envelope in red and elevation facing Pacific Highway

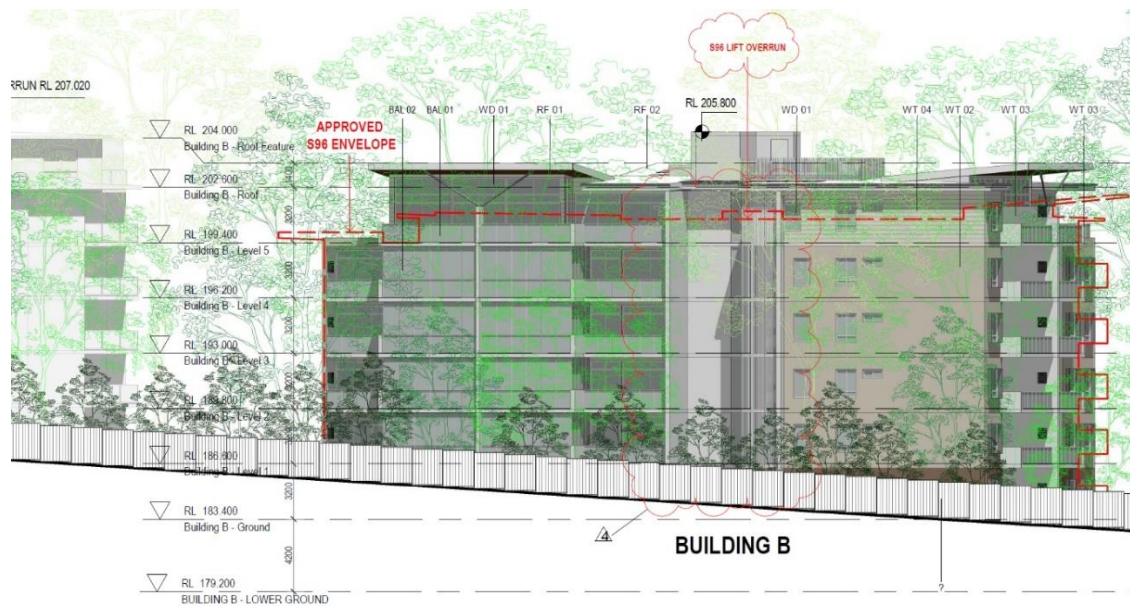


Figure 4: Building B - Eastern Elevation Plan prepared by Group GSA - identifies approved building envelope in red, relationship with existing Building C and elevation facing Pacific Highway

Proposed Changes to Conditions are outlined as follows:

**Table 2: Proposed Changes to Conditions**

Condition No	Condition requirements	Change Proposed	Reason for Change
1 (modified)	Approved plans and documents	Addition of Stage 3 Architectural Plans and supporting documentation	Modify to update plans and documentation to reflect proposed modification
2(f) (added)	Amendment of Plans	Increase in dimensions of waste and recycling cupboards and doors on each level of Buildings A and B	To ensure waste and recycling cupboards are sufficient/ accessible.
3(c) (modified)	Removal of Existing Trees	Stage 3 additional three trees to be removed	Due to unrecognised trees on previous approval and impacts associated with slight relocation of buildings
5(a) (modified)	Pruning Works – Stage 2 and 3	Removal of tree 181 which now requires removal and updated AIA details	Tree 181 now requires removal instead of pruning
19A (added)	On Site Stormwater Detention - Stage	Additional On-site Detention Details	To ensure adequate size and capacity
20A (added)	Water Quality/Bio Retention System	Additional details relating to water quality and treatment	To ensure adequate treatment of water



24 (modified)	Waste Management	Additional waste requirements to reflect design changes	To ensure adequate waste management on the site
26 (deleted)	Traffic Management Boom Gate	Delete condition requiring boom gate	Supported by traffic report (assessment agreed no longer required)
29A (added)	Garbage receptacle	Garbage receptacle must be provided at the work site before works begin	For appropriate waste disposal during construction - standard condition that was not on the original consent
31(d) (modified)	Tree Protection Zone Fencing	To delete tree 181 from condition, given tree is to be removed	Tree to be removed instead of protected
45(e) (modified)	Maintenance and Monitoring of Tree Protection	To delete tree 181 from condition, given tree is to be removed	Tree to be removed instead of protected
47 (modified)	Waste Management	Additional waste requirements to reflect design changes and updated legislation	To ensure adequate waste management on the site
70 (modified)	Waste Management	Additional waste requirements to reflect design changes and updated legislation	To ensure adequate waste management on the site
70A (modified)	Privacy Measures	To reflect unit numbers requiring privacy in the same location as original approval	Amended unit numbers
71 (modified)	Use of Premises	Total number of units 167 instead of 168	To reflect change in unit numbers
74 (deleted)	Operation of Traffic Management Boom Gate	Delete condition regarding operations of boom gate	Supported by traffic report (assessment agreed no longer required)
77 (modified)	Waste Management	Additional waste requirements to reflect design changes and updated legislation	To ensure adequate ongoing waste management on the site

## 2.2 Background

DA/394/2015 was determined by the Sydney North Planning Panel on 2 December 2015 and has been modified on 3 occasions.

DA/394/2015 was granted consent for:

- The construction and use of a new residential care facility (“RACF”) building comprising a part 2 and part 3 storey buildings, providing accommodation for up to 122 seniors. The RACF would include a range of activities for residents and support services to provide a high level of care to residents.
- The construction of 5 independent living unit buildings (ILUs) with basement car parking spaces providing 168 dwellings for seniors.
- The provision of community facilities to meet the needs of residents including the ground floor and basement of Building E.
- The construction of internal access roads
- Site landscaping
- Provision of associated site services, stormwater management and utilities.
- Staged demolition of all remaining buildings on the site including the existing day therapy centre, the existing nursing home and independent living units and associated ancillary buildings.
- Ancillary and incidental uses to the above purposes.
- The works were approved to be undertaken in 3 stages.

On 13 June 2018, the Sydney North Planning Panel approved DA/394/2015/A to modify the design and staging of the approved seniors housing development. The main changes included increasing Building C from five to six storeys, modifying the staging and design changes to the units.

On 23 July 2019, Council approved DA/394/2015/B to change the use of the café to a community room and use as a marketing and display suite on a temporary basis during the construction and pre-sales period.

On 3 September 2019, Council approved DA/394/2015/C to modify condition 24(d) relating to the design of the internal road. Under DA/394/2015/A the road width was increased from 4.5m to 6m. The increased width resulted in sufficient width to enable access by waste vehicles to serve the development and not be obstructed. The application also approved to remove the requirement that there be no garden beds, trees, shrubs or other raised object or landscaping feature within 1 metre of the side of the road to allow for the approved landscaping to be undertaken with an improved amenity outcome.

The subject modification application was lodged on 27 June 2022. A chronology of the development application since lodgement is outlined in **Table 3**.

**Table 3: Chronology of the DA**

Date	Event
<b>30 June 2022</b>	Exhibition of the application
<b>1 July 2022</b>	DA referred to internal branches - Parks and Landscape, Waste Management, Engineers and Traffic & Road Safety
<b>10 August 2022</b>	SNPP Kick-off briefing
<b>24 August 2022</b>	Design Excellence Panel meeting undertaken with Council and Applicant
<b>6 September 2022</b>	Request for Information from Council to Applicant based off DEP advice and internal branch comments
<b>26 October 2022</b>	<p>Amended plans lodged to address DEP advice and internal branch requested - amended documents include:</p> <ul style="list-style-type: none"> <li>• A new set of architectural drawings with the amendments clouded</li> <li>• A new set of landscape drawings incorporating changes as discussed in the design response report</li> <li>• Advice from the applicant's civil engineer relating to on-site detention; and</li> <li>• An amended Waste Management Plan.</li> </ul> <p>Key amendments detailed below.</p>
<b>17 November 2022</b>	DA re-referred to internal branches for comment
<b>7 December 2022</b>	SNPP Council and Applicant Briefing
<b>8 December 2022</b>	Council requested further 'substantially the same development' discussion from the Applicant
<b>18 January 2023</b>	Additional information requested 08/12/22 submitted.
<b>8 March 2023</b>	SNPP determination scheduled

Key amendments to plans and documentation submitted 26 October 2022 (detailed by the Applicant) are as follows:

- *Typical balcony detail drawing (A4100) added to the architectural set of drawings in response to council comment regarding balconies' drainage issue.*
- *Revised sun eye study added to the architectural set of drawings (A9022), providing further information relating to the solar access to the existing Unit D46.*
- *Basement 01 and 02 carpark amended to reduce car parking numbers to 105 spaces.*
- *The semi-enclosed drying courts have been removed from the floor plans. A portion of the Ground Floor for both Building A and B has been reconfigured to maintain a clean façade articulation.*
- *Basement vehicular access amended. Canopy has been removed and balconies reconfigured.*

- *Garbage rooms reconfigured to accommodate 8 m2 of bulky waste area and bin lifter. Retail garbage zone provided in Building B waste room.*
- *Amended landscape to street edge and extended footpath. Minor changes to planters. Please refer to Landscape architect set of drawings.*
- *Inclusion of FOGO bin within the waste room on each residential level*
- *Entry Lobby Building A and B amended to allow sufficient seating and waiting areas.*
- *Plant room amended to accommodate A/C Units*
- *Note added to indicate the elements used to achieve the adequate level of privacy*
- *Storage room amended to accommodate COMMS room*
- *Window shrouds added to North and West facades*
- *Note added to indicate DA approved Lift Overrun outlines*
- *Additional information added to material schedule.*

### 3. STATUTORY CONSIDERATIONS

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When determining a modification application, the consent authority must take into consideration the matters outlined in 4.55(2) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in relation to modification of consents provisions, Section 4.15(1) of the *EP&A Act* in relation to matters for consideration for applications and Part 5 of the *Environmental Planning and Assessment Regulation 2021* in relation to information requirements and notification. These matters are considered below.

#### 3.1 Section 4.55(2) of the Environmental Planning and Assessment Act 1979

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Sydney North Planning Panel (for s4.55(2) applications) and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the *EP&A Act*. The matters include the following:

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)), and*

In accordance with the NSW Land and Environment Court decision *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999), 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).”*



Therefore, in order for a Consent Authority to consider a Section 4.55, the following must be considered:

- a) Consideration of the numerical differences in all key aspects of the development,
- b) Consideration of the non-numerical factors (e.g., in visual impact, traffic impacts or changed land uses); and
- c) Consideration of any changes relating to a material and essential feature of the approved development.

The scope and nature of the originally approved development is expressed in the consent determined on 2 December 2015 and the documents referred to in the consent including the Statement of Environmental Effects dated April 2015 and additional information accompanying amendments to the development application prior to determination. This enables consideration of the material and essential elements of the consent and where the development or an essential or material component of the development is so altered that it can no longer be said to be substantially the same development.

This is a matter of fact and degree depending upon the facts and circumstances of the originally approved development and the modifications proposed. To assist in this process a diagram has been prepared overlaying the original approved footprint over the proposed footprint (see Figure 5 below).

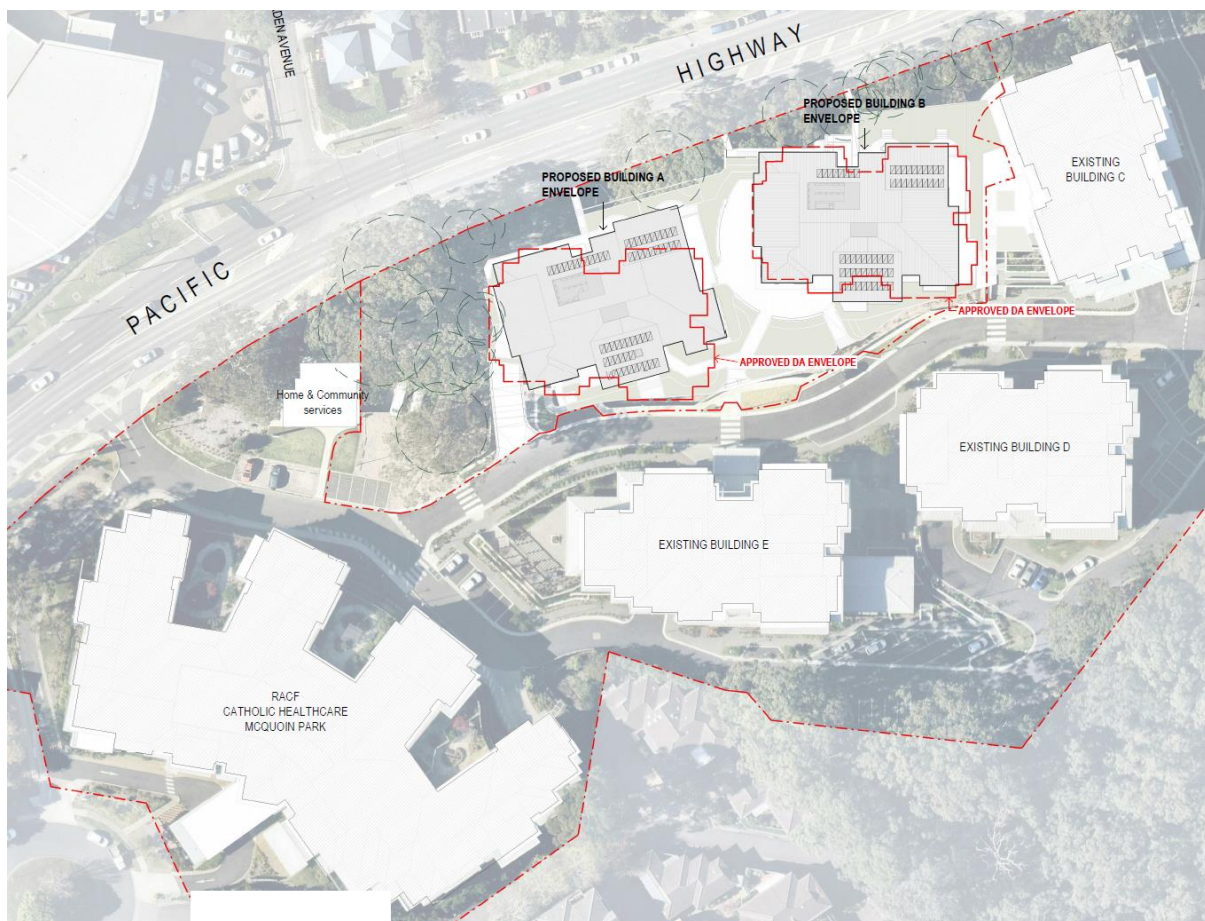


Figure 5: Site Plan with original approved building envelope overlay, prepared by Group GSA

The applicant provided a list of reasons demonstrating that the development as modified is substantially the same development as that originally approved. These are outlined as follows:

- *The use remains the same being seniors housing development comprising a residential care facility (unchanged) and self-contained dwellings for seniors housing with parking;*
- *The number of residential buildings remains the same;*

- *The number of independent living units remains generally the same with a reduction of one dwelling and a change to dwelling mix to suit expressed seniors requirements;*
- *The site layout remains the same with a minor change to the orientation of Building A and adjustments to the footprint of Building B. The remaining four independent living unit buildings and the residential care facility are not modified;*
- *The building architecture and materials of Buildings A and B remain complementary to the approved design and the design of other buildings on the site;*
- *The increase in the number of storeys from 5 to 6 in Buildings A and B is consistent with the design intent of the original approval with taller buildings along the Pacific Highway (noting that the increase in building height is minor);*
- *The FSR of the development remains generally the same at 1.1:1, increasing from 1.07:1 to 1.11:1.*
- *Landscaping remains generally the same, including importantly, the retention of mature trees along the Pacific Highway boundary;*
- *There is no change to hours of operation or employment;*
- *No significant change to stormwater management strategy or provision of utility services except for a change in substation location within the site;*
- *Parking provision has changed to reflect the change in apartment mix, with all parking remaining in basements. The number of parking spaces over and above SEPP requirements remains the same at 10.*
- *Site access and internal road layout has not changed.*

The development as modified is substantially the same development for which consent was originally granted. The proposal as modified would retain the approved seniors living development, comprising Residential Aged Care Facility for 122 beds and five Independent Living Unit buildings, comprising a total of 167 units. The general external design and architecture of Buildings A and B has not significantly altered from the approved design and from the completed Buildings C, D and E. Architectural design features of roof forms and facade elements are maintained and the facade material palette is consistent with the approved design and the completed buildings.

The proposed modifications to Building A and B to increase from five to six storeys is considered a minor change to the approved design, given that the sixth floor would be recessed from the level below on the eastern (Pacific Highway) and southern elevation. Other design changes proposed under this consent are minor and would not significantly intensify the development approved on the site.

The modified proposal would not result in any significant additional noise, overshadowing or overlooking to adjoining properties. Accordingly, it is considered the proposed modification is substantially the same development as the development for which consent was originally granted.

- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and*

The original development application was integrated development requiring General Terms of Approval from the NSW Rural Fire Service (RFS). The modified proposal was not required to be referred the RFS for comment due to the site no longer identified as bushfire prone. No objections were raised to the modified proposal in this regard.

The modified proposal was not required to be referred to the Transport for NSW (TfNSW) as the modified proposal would not alter the approved vehicular access points from the Pacific Highway and the modification would not increase the number of units on the site.

(c) *it has notified the application in accordance with—*

- (i) *the regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and*

the modified proposal was publicly exhibited and one submission from a nearby property owner was received.

(d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).*

The modification application was notified between 30 June 2022 until 22 July 2022 and one submission was received. The issues raised in these submissions are considered in Section 4 of this report.

(e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).*

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act - these matters are considered below in Section 3.2 of this report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified - outlined below.

#### Reasons for Grant of Consent

The Sydney North Planning Panel granted consent to the original development in a notice of determination dated 2 December 2015. The reasons outlined in the Statement of Reasons for this decision included the following:

1. *The proposed development will add to the supply of housing for seniors and people with a disability within the North Metropolitan Subregion and the Hornsby local government area in a location with ready transport access to the services and amenities available within Hornsby Town Centre.*
2. *The proposed development adequately satisfies the relevant State Environmental Planning Policies including SEPP (Housing for Seniors and People with a Disability), SEPP 65 (Design*

*Quality of Residential Flat Development) and its associated Residential Flat Design Code, SEPP 55 Remediation of Land and SEPP (Infrastructure) 2007.*

3. *The proposal adequately satisfies the applicable provisions and objectives of Hornsby LEP 2013. In this regard the Panel notes that a number of provisions contained in the Seniors Housing SEPP prevail over those contained in the HELP.*
4. *The proposed development is considered to be of appropriate scale and form for this locality noting that the site and adjoining premises have been used for many years as aged and disability care centre.*
5. *The proposed development, subject to the conditions imposed, will have no unacceptable adverse impacts on the natural or built environments including the remnant bushland species and heritage valued on site trees, overland flow patterns, the amenity of nearby residential premises, or the operation of the local road system.*
6. *In consideration of conclusions 1-5 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.*

The proposed modification is consistent with these reasons for the decision on this consent in that the proposed development is entirely consistent with the planning controls and expectations for the site given the zoning and other planning controls for the site.

### **3.2 Section 4.15(1) of the Environmental Planning and Assessment Act 1979**

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.55(3) which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*
- (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

*that apply to the land to which the development application relates,*

- (a) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (b) *the suitability of the site for the development,*
- (c) *any submissions made in accordance with this Act or the regulations,*
- (d) *the public interest.*



### 3.3 Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations

The relevant provisions under s4.15(1)(a) are considered below.

#### 3.3.1 Environmental Planning Instruments (s4.15(1)(a)(i))

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Hornsby Local Environmental Plan 2013

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

**Table 4: Summary of Key Matters in the Relevant EPIs**

EPI	Matters for Consideration	Comply
<b>SEPP (Biodiversity &amp; Conservation)</b>	<b>Chapter 2:</b> Vegetation in non-rural areas <b>Chapter 9:</b> Hawkesbury-Nepean River	Y
<b>BASIX SEPP</b>	BASIX Certificate supplied for a total of 79 ILU's within Buildings A and B. No compliance issues identified, subject to imposition of conditions.	Y
<b>SEPP (Housing)</b>	<b>Chapter 3: Diverse Housing</b> Housing for Seniors and people with a disability	Y
<b>SEPP 65</b>	<ul style="list-style-type: none"> <li>• <b>Clause 30(2)</b> - Design Quality Principles - The proposal is consistent to the design quality principles and the proposal is consistent to the ADG requirements as discussed in Section 3.4.5 below.</li> </ul>	Y
<b>SEPP (Planning Systems)</b>	<b>Chapter 2: State and Regional Development</b> <ul style="list-style-type: none"> <li>• Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6.</li> </ul>	Y
<b>SEPP (Resilience &amp; Hazards)</b>	<b>Chapter 4: Remediation of Land</b> <ul style="list-style-type: none"> <li>• <b>Section 4.6</b> - the proposed modification would not alter the development's compliance with Chapter 4 of SEPP (Resilience and Hazards)</li> </ul>	Y

<b>SEPP (Transport and Infrastructure)</b>	<b>Chapter 2: Infrastructure</b> <ul style="list-style-type: none"> <li><b>Section 2.119 and 2.122</b> - The development was not required to be referred to TfNSW as the modified proposal would not alter the approved vehicular access points from the Pacific Highway and the modification would not increase the number of units on the site.</li> </ul>	Y
<b>LEP</b>	<ul style="list-style-type: none"> <li><b>Clause 2.3</b> - Permissibility and zone objectives</li> <li><b>Clause 4.3</b> - Height of Buildings - discussed in Section 3.2 below</li> <li><b>Clause 5.10</b> - Heritage Conservation - no change to previous assessment</li> <li><b>Clause 6.2</b> - Earthworks</li> <li><b>Clause 6.4</b> - Terrestrial Biodiversity</li> <li><b>Clause 6.8</b> - Design Excellence - Discussed in Section 3.3 below</li> </ul>	Y N  Y  Y Y Y
<b>DCP</b>	The proposed development would not alter the development compliance with the relevant Parts of Chapters 1, 7 or 9 of the HDCP	Y

### 3.3.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The modification has been assessed against the requirements of chapters 2 and 9 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

#### Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of this policy aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 2.3 of the policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

Three additional trees required removal. Section 3.8.8 of this report provides an assessment in accordance with Part 1B.6.1 of the HDCP.

#### Chapter 9 Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury-Nepean River. The aim of this chapter is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of development are considered in the regional context. Part 9.2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would not impact on the water quality of the catchment and would comply with the requirements of chapter 9 of the Biodiversity and Conservation SEPP.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP) applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No.1272554M\_03 prepared by Aspire Sustainability Consulting dated 9 June 2022 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

### 3.3.4 State Environmental Planning Policy (Housing) 2021

The application was lodged and determined having regard to the provisions of the former State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HS&PD) which was repealed by State Environmental Planning Policy (Housing) 2021 (Housing SEPP). Thus, the original application was assessed under the provisions of the former SEPP. In most relevant aspects, the provisions are the same.

The modified proposal is considered consistent with the site capability and design requirements of the original development and would result in negligible changes with the assessment of the proposal against the Housing SEPP and is considered acceptable in this regard

For the purposes of assessment against Part 5 of the Housing SEPP, the proposed development is defined as a 'Independent Living Unit' (formerly referred to as self-contained dwellings). A detailed assessment of the proposal's compliance with SEPP HS&PD was made in the assessment of the original application.

The amended application would reduce the number of ILU's from 168 to 167 units.

SEPP HS&PD defined self-contained dwellings as:

*'a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.'*

The proposal maintains compliance with the above definition.

The assessment of the proposal in accordance with the relevant requirements of the Housing SEPP is provided below.

#### Clause 84 and 85 - Development Standards (general and for hostels and independent living units)

As the proposed development is being undertaken by Catholic Health Care, a social housing provider, there are no development standards applicable in relation to site requirements and building height under the Housing SEPP.

The approved development provides for 2x five storey and 1x six storey buildings along the Pacific Highway frontage (buildings A, B and C). The roof ridge height of buildings A, B and C steps down from south to north to reflect the natural topography.

The application proposes to increase the height of Building A and B from five to six storeys.

In the absence of any applicable development standards for height under the Housing SEPP, the assessment of the building height is merit based.

Existing trees and vegetation along Pacific Highway would soften the appearance of the buildings from within the streetscape. The recession of the sixth floor would minimise the perceived bulk and scale of the development when viewed from the east and south of the site. Balconies and living areas of units on the sixth floor are orientated to the north and east to maximise solar access and minimise privacy and amenity impacts to properties to the south. Although Building A and B would be taller than other buildings on the site, the sixth storey would be consistent with Building C, the impacts of the proposal are considered reasonable, and the proposal would create variety in the built form with an appropriate bulk and scale.

#### Clause 88 - Restrictions on occupation of seniors housing allowed under this Chapter

Restrictions exist on the occupants of this form of housing to ensure that only seniors and people with a disability are residents. Condition No. 76 was applied to the original consent to ensure compliance with this provision. No further consideration is required for the modified proposal.

#### Clause 91 - Fire sprinkler systems in residential care facilities

Condition No. 8 was applied to the original consent requiring a fire sprinkler system. No further consideration is required for the modified proposal.

#### Clause 93 - Location and access to facilities – ILU's

The development complies with the site requirements set out in Clause 93 of the Housing SEPP. The proposed modification would not impact on the proposal's compliance with this clause.

#### Clause 95 - Water and Sewer

The subject site is adequately provided with water and sewer services. Appropriate conditions for approval from Sydney Water were applied to the original consent. No further consideration is required under the modified proposal.

#### Clause 96 - Bush fire prone land

A portion of the site was previously identified as bush fire prone land and the NSW RFS provided conditions of consent during the assessment of the original application.

The modified proposal was not required to be referred the RFS for comment as the site is no longer identified as bushfire prone land. No objections were raised to the modified development in this regard and the NSW RFS conditions would remain unchanged.

#### Clause 99 - Neighbourhood Amenity and Streetscape

The subject site has been used for the purposes of senior's housing for a number of years and is adjoined by the Grange development and recently constructed three storey residential care facility to the south. The development as modified remains compatible with the character of the surrounding area in terms of use and level of activity.

The proposed modification would involve the increase of Building C from five to six storeys. The sixth floor has been designed to be recessive when viewed from the Pacific Highway and southern adjoining properties. Established trees along the Pacific Highway frontage will obscure the building's visibility



from both street approaches. The established vegetation provides filtered views towards the subject site which contributes to the visual amenity of the locality.

The setback of Building C from the southern boundary has been slightly increased which would reduce the perception of the increase in height from the adjoining residential development. Vegetation along the southern boundary provides a buffer between the development and adjoining development to the south. The development as modified is acceptable with respect to neighbourhood amenity and streetscape.

The proposed modification would not alter the approved material and finishes of the development. Each of the buildings have well-articulated facades, comprise a range of building materials and colours and feature roof and blade elements. The upper portions of the buildings comprise lightweight cladding in parts to reduce building mass.

#### Clause 100 - Visual and acoustic privacy

The proposed development has been designed to minimise visual and acoustic privacy impacts within the development by providing appropriate building setbacks, building separations, landscape treatment and appropriate building designs such as consideration of window placement and privacy screening.

Concerns were raised in community submissions regarding the increase in the height of Building C and the impacts this would have on adjoining residents in terms of visual and acoustic privacy. Block C was approved with a setback of 10.5 to 18.5 metres from the southern boundary. The proposed modification increases the setback from 12.1 to 20 metres. A 3.5 metre wide public laneway is located between the site and the boundary shared with No. 8A and No. 10 Netherby Street, which each contain a dwelling-house. A number of other single and two storey dwellings are located beyond the site's southern boundary on Netherby Street.

The approved design of Building C included two units per floor (total 10 units) orientated to the south, with living room windows and balconies orientated to the southern boundary. Two secondary balconies accessible from bedrooms were also orientated to the south.

The design of the modified proposal has been altered to minimise visual and acoustic privacy impacts to dwellings to the south. The modified design provides for one unit per floor (on Levels 1-5) with living room windows and balconies orientated to the south. Secondary balconies off bedrooms have been deleted. On the proposed sixth floor, there are no living room windows or balconies orientated to the south. This modification would also minimise the privacy impacts on the north facing windows on the adjoining residential care facility located at No. 33 Pacific Highway.

Taking into account the setback, design and orientation of units, the amended proposal ensures an adequate level of privacy is afforded to the dwelling houses and residential care facility to the south. The separation of the proposed buildings in relationship with surrounding properties is sufficient to minimise the extent of any privacy impact. The retention of boundary vegetation assists in minimising any impact of the development to surrounding properties.

#### Clause 101 -Solar access and design for climate

Shadow diagrams have been submitted as part of the modified application addressing the impacts of overshadowing from the development on 21 June.

Consideration has been given to the shadow impacts of Building C on the residential properties to the south of the site accessed from Netherby Street (Nos. 8A, 8 and 10). These properties are separated from the site by a public footpath. The diagrams show that the addition of the sixth floor would not

increase the overshadowing approved under the original development. The reduction in the overshadowing impacts is attributable to the increase in the building setback from the southern property boundary and the recession of the sixth floor.

The additional two units proposed within Building E would elongate the building and would result in a minor increase in the extent of overshadowing to 'the Grange' located on the western adjoining property. There would be an increase in overshadowing prior to 10am, however this will not affect any dwellings or private open space areas on the adjoining site.

The development as modified would not have an unreasonable impact on the solar access of adjoining properties and the impacts are generally consistent with the approved development.

#### Clause 102 - Stormwater

Amended civil drawings were submitted as part of the proposed modification to reflect the detail in the modified design, relating to driveway design and drainage pits and pipes. The civil drawings provide for additional water quality and quantity measures to accommodate the widening of the internal access road to 6m. Council's engineering assessment confirms the modified proposal maintains consistency with the approved stormwater management strategy for the site and is acceptable.

#### Clause 103 - Crime prevention

The unit buildings are oriented to provide passive surveillance over common areas. The development includes overhead and low level lighting to pathways and building entrances. Conditions applied to the original consent are relevant to the modified proposal and include a requirement for security measures for unit buildings and basement areas and for external lighting to be installed.

#### Clause 104 - Accessibility

An access report submitted with the original application demonstrated compliance with Clause 41 of SEPP HS&PD, in terms of wheel chair access, security and pathway lighting, car parking and unit design. Condition No. 49 was applied requiring fulfilment of accessibility commitments pertaining to the development as required by Clause 41. The modified proposal includes a revised access report which demonstrates accessibility requirements can be satisfied. The development as modified is acceptable with respect to Clause 104 of the Housing SEPP, subject to fulfilment of conditions.

#### Clause 105 - Waste management

An amended Waste Management Plan was submitted with the application to reflect the proposed changes to Buildings A and B. Conditions have been modified to reflect these changes and proposed waste management (during construction and ongoing) on the site is considered acceptable in this regard.

#### Clause 108 - Non-discretionary development standards for independent living units

The proposed modification involves no change to the approved residential care facility that has been constructed on the site and no further assessment with respect to this Clause is not required.

The Housing SEPP includes non-discretionary development standards whereby compliance cannot be used to refuse development consent. The following table sets out the modified proposal's compliance with these standards:

Clause	Control	Requirement	Approved	Proposal	Compliance
108(2)(a)	Building height	9.5m	5 storeys (buildings A & B)	6 storeys (building A & B)	No
108(2)(c)	Density and Scale	0.5:1	1:1	1.11:1	No
108(2)(d)	Landscaped Area	35m	33.6m <sup>2</sup>	33.8m <sup>3</sup>	No
108(2)(f)	Deep Soil %	>15%	25%	Unchanged	Yes
108(2)(g)	Solar Access	70% (3hrs between 9am & 3pm)	72%	73.4%	Yes
108(2)(h)	POS	15m <sup>2</sup> ground	>15m <sup>2</sup> ground	Unchanged	Yes
108(2)(i)	Balcony Area	10m <sup>2</sup> (1 <sup>st</sup> floor and above)	>10m <sup>2</sup>	Unchanged	Yes
108(2)(j)	Car Parking (1 per 5 dwellings)	34 spaces	172 spaces (within basements)	197 spaces (within basements)	Yes

The provisions of Clause 108 are not development standards that can be used to refuse development consent for ILUs. The issues of building height, density and landscaped area are discussed within Sections 3.4.4 of this report.

#### Schedule 7A Clause 3 - Continued application of site compatibility certificate (Savings Provision)

Under former SEPP HS&PD, a Site Compatibility Certificate (SCC) was not required. Clause 24 of the SEPP HS&PD outlines the following:

#### **24 Site compatibility certificates required for certain development applications**

- (1) *This clause applies to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing (other than dual occupancy) if—*
- (a) *the development is proposed to be carried out on any of the following land to which this Policy applies—*
    - (i) *land that adjoins land zoned primarily for urban purposes,*
    - (ii) *land that is within a zone that is identified as “special uses” under another environmental planning instrument (other than land on which development for the purposes of hospitals is permitted),*
    - (iii) *land that is used for the purposes of an existing registered club, or*
  - (b) *the development application involves buildings having a floor space ratio that would require the consent authority to grant consent under clause 45.*
- (1A) *Despite subclause (1), this clause does not apply to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing if the proposed development is permissible with consent on the land concerned under the zoning of another environmental planning instrument.*

As per Clause 24(1A) above, given SEPP HS&PD permits Senior Housing on land where RFB's are permitted, a site compatibility certificate was not required.

Where a site compatibility certificate is not required, Clause 29 of SEPP HS&PD requires consideration of:

- *Natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development.*
- *The services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision,*
- *Without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.*

The proposed modification is acceptable with respect to the natural environment. Three additional trees are proposed to be removed as part of the modified proposal. Whilst the NSW RFS conditions still apply from the original application, the site is no longer considered bushfire prone land. With respect to the flooding constraint, this matter has been addressed in the original application and drainage works have been completed on the site as part of Stage 1, to contain the overland flow path in the event of a flood.

In the assessment of the original application, it was determined that the services and infrastructure are available to meet the demands of the development. The proposed modification would not intensify the development and would not increase the demands for services and infrastructure.

The bulk, scale and character of the development is appropriate given the current and approved use of the site and the adjoining development. The proposed increase in height of buildings A and B would not significantly alter on the visual impact of the development on the Pacific Highway and adjoining properties due to the recessed design and existing/proposed vegetation which softens the appearance of the development.

The proposed modification is acceptable with respect to the site suitability criteria of this clause.

The development would be compliant with the relevant requirements of the Housing SEPP and is considered acceptable.

### **3.3.5 State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development**

The modified proposal requires consideration of the State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development (SEPP 65), which aims to raise the design quality of residential flat development across NSW through the application of a series of design principles.

A design verification statement was provided in the original application and satisfactory addressed the provisions of SEPP 65. A revised statement verification statement, prepared by Group GSA has been provided to address the modified built form. The submitted Statement contains comments responding to each of the Design Quality Principles and concludes by stating that the development as modified generally meets the objectives and intent of the design quality principles set out in Part 2 of SEPP 65.

Council has reviewed the submitted Statement and agrees that the proposal satisfactorily addresses/ incorporates the Design Quality Principles of SEPP 65 as follows:

SEPP 65 - Schedule 1 Assessment	
Principle	Compliance
<b>1. CONTEXT AND NEIGHBOURHOOD CHARACTER</b>	<b>Yes</b>
<p><b>Comment:</b> The site is located within an area zoned for residential flat buildings in close proximity to Waitara Railway Station. The proposal responds to the desired future character of the precinct as envisaged by Council for residential flat buildings in landscaped settings with underground car parking. The proposed modification would achieve a development which is considered suitable with respect to the site context and neighbourhood character.</p>	
<b>2. BUILT FORM AND SCALE</b>	<b>Yes</b>
<p><b>Comment:</b> The modified proposal would not significantly increase the perceived bulk and scale of the approved development. Buildings A and B are proposed to increase from five to six storeys, however the proposed sixth floor is recessed and would be screened by established and proposed vegetation along the Pacific Highway frontage.</p> <p>The scale of the development is commensurate with that of the adjoining and nearby development. The development achieves a scale consistent with the desired outcome for well-articulated buildings that are set back to incorporate landscaping, open space and separation between buildings.</p> <p>The proposed building achieves an appropriate built form for the site and its purpose, in terms of building alignments, proportions, and the manipulation of building elements. The materials and finishes would add to the visual interest of the development.</p>	
<b>3. DENSITY</b>	<b>Yes</b>
<p><b>Comment:</b> The proposed modification involves design changes to the unit buildings and would increase the proportion of three bedroom units. No increase in the approved number of units from 168 to 167 is proposed.</p> <p>The modified proposal is sustainable as it responds to the regional context, availability of infrastructure, public transport, community facilities and environmental quality and is acceptable in terms of density.</p>	
<b>4. SUSTAINABILITY</b>	<b>Yes</b>
<p><b>Comment:</b> The applicant has submitted a BASIX Certificate for the amended development. In achieving the required BASIX targets for sustainable water use, thermal comfort and energy efficiency, the proposed development would achieve efficient use of natural resources, energy and water throughout its full life cycle, including demolition and construction.</p>	
<b>5. LANDSCAPE</b>	<b>Yes</b>
<p><b>Comment:</b> The modified proposal would require the removal of an additional three trees than approved under the original development consent. The proposal has been designed to facilitate the retention of significant trees as identified as a heritage item within the HLEP.</p>	



The building footprint and provision of car parking under the buildings allows for increased landscaping, in particular deep soil planting. The proposed landscape scheme incorporates the existing trees and provides screening.	
<b>6. AMENITY</b>	<b>Yes</b>
<p><b>Comment:</b> The modified proposal includes design changes to each of the units to include a laundry. The provision of a drying court on each level of the unit buildings forms part of the modified proposal. These changes have required minor design changes to the configuration of units and the footprint of the buildings.</p> <p>The amended proposal contains units designed with appropriate room dimensions and layout to maximise amenity for future residents. The proposal incorporates good design in terms of achieving natural ventilation, solar access and acoustic privacy. All buildings incorporate accessible design, access to balconies is provided from living areas and privacy has been achieved through appropriate design and orientation of balconies and living areas.</p> <p>Storage areas have been provided within each unit and in the basement levels. The proposal would provide convenient and safe access via a central lift connecting the basement and all other levels.</p>	
<b>7. SAFETY AND SECURITY</b>	<b>Yes</b>
<p><b>Comment:</b> The modified proposal would not alter the compliance of the original proposal with regard to the principle of safety.</p> <p>The design orientates the balconies and windows of individual apartments towards the street, rear and side boundaries, providing passive surveillance of the public domain and communal open space areas. The pedestrian and vehicular entry points are secured and visibly prominent. Condition No. 69 was applied to the consent for safety and security measures to be installed in the unit buildings and this condition is relevant to the modified proposal.</p>	
<b>8. HOUSING DIVERSITY AND SOCIAL INTERACTION</b>	<b>Yes</b>
<p><b>Comment:</b> The modified proposal would not alter the development's compliance with this principle. The development responds to the social context in terms of providing a range of dwelling sizes with good access to social facilities and services. The development comprises a range of facilities including a café, swimming pool and communal areas to provide opportunities for social interaction among residents.</p>	
<b>9. AESTHETICS</b>	<b>Yes</b>
<p><b>Comment:</b> The proposed modification would not alter the approved architectural treatments, materials and finishes. The articulation of the building, varying roof form, composition of building elements, textures, materials and colours would achieve a built form generally consistent with the design principles contained within the Apartment Design Guide.</p>	

### 3.3.5.1 Apartment Design Guide

At the time of the assessment of the original application, SEPP 65 also required consideration of the Residential Flat Design Code. SEPP 65 was amended 19 June 2015 and principally has the effect of replacing the Residential Flat Design Code (RFDC) with the Apartment Design Guide (ADG) amongst other amendments to the operation of the SEPP.

The following table sets out the proposal's compliance with the ADG. The design principles of SEPP 65 and the submitted design verification statement are addressed in the following table.

Apartment Design Guide			
Control	Proposal	Requirement	Compliance
Communal Open Space (3D-1)	>25%	25% of site area	Yes
Solar Access (Communal open space areas) (3D-1)	>50%	50% direct sunlight access for 2 hours	Yes
Deep Soil Zone (3E-1)	25% (as approved)	15% of site area	Yes
Building Separation (3F-1)			
- <i>Ground - Level 3 (A-B)</i>	8.9m	12m between habitable windows and balconies. 6m to non-habitable	No
- <i>Level 4- Level 5 (A-B)</i>	9.4m	18m between habitable windows and balconies. 9m to non-habitable	No
- <i>Ground - Level 3 (B-C)</i>	12m	12m between habitable windows and balconies. 6m to non-habitable	Yes
- <i>Level 4- Level 5 (B-C)</i>	13-18m	18m between habitable windows and balconies. 9m to non-habitable	No
Car Parking (3J-1)	105 spaces (approved 80)	95 spaces	Yes
Solar Access (4A-1)			
- <i>Living rooms</i>	73.4% - 58/79	2 hours for 70%	Yes
- <i>Private open space</i>	73.4% - 58/79	2 hours for 70%	Yes

No Solar Access allowable for units (4A-1)	5% - 4/79	15% of units (max)	Yes
Natural Cross Ventilation (4B-3)	60.75% - 48/79	60%	Yes
Ceiling Height (4C-1)	2.7m 2.4m	2.7m for habitable rooms 2.4 for non-habitable rooms	Yes
Minimum Dwelling Size (4D-1)			
- 2 bed units	>70m <sup>2</sup>	70m <sup>2</sup>	Yes
- 3 bed units	>90m <sup>2</sup>	90m <sup>2</sup>	Yes
Minimum Window Size (4D-1)	>10%	10% of floor area of room	Yes
Habitable Room Depth (4D-2)	9m	8m from a window (max for open plan) or 2.5 x ceiling height	No
Apartment Layouts - Minimum Bedroom Size (4D-3)			
- Master bedroom	>10m <sup>2</sup>	min 10m <sup>2</sup>	Yes
- Other bedrooms	>9m <sup>2</sup>	min 9m <sup>2</sup>	Yes
Apartment Layouts - Combined Living / Dining Rooms Minimum Width (4D-3)			
- 2/3 bed units	4m	4m	Yes
Apartment Layouts - Cross Through Apartments (4D-3)	>4m	min 4m width	Yes
Minimum Balcony Size (4E-1)			
- 2 bed units	>10m <sup>2</sup>	10m <sup>2</sup> / 2m depth	Yes
- 3+ bed units	>12m <sup>2</sup>	12m <sup>2</sup> / 2m depth	Yes
Maximum Number of Units on a Single Level (4F-1)	max. 7	8 units off a circulation core	Yes
Storage (4G-1)			
- 2 bed units	>8m <sup>3</sup>	8m <sup>3</sup>	Yes

- 3+ bed units	>10m <sup>3</sup>	10m <sup>3</sup>	Yes
- % located within unit	50%	50%	Yes

- The habitable room depth and building separation non-compliances outlined above are consistent with the original approval.
  - All units offer an open layout with natural ventilation and accordingly, the minor non-compliance is acceptable with respect to residential amenity.
  - The amended proposal is similar in built form and design to the approved development and is acceptable with respect to visual privacy between buildings.
- Internal noise attenuation between neighbouring units, with particular focus on those units where a living/ media room is adjacent to a bedroom on either side of an intertenancy wall should be considered in accordance with Part 4H of the ADG - matter raised by SNPP at kick off briefing held 10 August 2022.

Applicants response:

*The acoustic rating of walls between apartments will be determined in accordance with the BCA and as advised by the project acoustics consultant. A condition of development consent to this effect is invited.*

Council's comment:

It is considered that most apartments throughout the complex have demonstrated effort to reduce potential amenity impacts associated with noise between living rooms and bedrooms of adjoining apartments. The acoustic rated walls between apartments would reduce noise amenity impacts for bedrooms/ living rooms that adjoin bedroom/ living rooms of adjoining apartments and is considered acceptable in this regard.

### **3.3.6 State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP')**

The provisions of Chapter 2 of State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) have been considered in the assessment of the modification application.

Chapter 2: State and Regional Development

The proposal is regionally significant development pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is considered a modified development to General Development over \$30 million. Accordingly, the Sydney North Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

### **3.4.6 State Environmental Planning Policy (Resilience and Hazards) 2021**

The provisions of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) have been considered in the assessment of the modification application.

Chapter 4: Remediation of Land

Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated

state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

Appropriate conditions of consent were applied to the original consent been applied requiring verification that the site has been remediated in accordance with the remediation action plan provided (refer to condition No. 58). Subject to fulfilment of this condition, the site is suitable for residential development. The proposed modification would not alter the development's compliance with the original assessment under SEPP 55 and the requirements of the Resilience and Hazards SEPP.

### **3.3.7 State Environmental Planning Policy (Transport and Infrastructure) 2021**

The modification has been assessed against the requirements of Division 17 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

#### Subdivision 2 - Development in or adjacent to road corridors and road reservations

The original application was assessed under the repealed Infrastructure SEPP and the equivalent provisions of Section 2.118 and 2.122 of the Transport and Infrastructure SEPP given the proposal has a frontage to a classified road being the Pacific Highway and is considered a Traffic Generating Development.

Whilst the original proposal was referred to the Transport for NSW (formerly RMS), the modified proposal was not required to be referred to TfNSW as the proposal would not alter the two vehicular entry points from the Pacific Highway, unit numbers would not be increasing and the overall parking demands on the site are not significantly increase as a result of the modified development.

Council's traffic assessment concluded that the proposal as modified would not have any adverse impact on the safety, efficient and ongoing operation of the Pacific Highway and is acceptable with respect to the relevant sections of the Transport and Infrastructure SEPP.

### **3.3.8 Hornsby Local Environmental Plan 2013**

The proposed development has been assessed having regard to the provisions of the Hornsby Local Environmental Plan 2013 (HLEP). Zoning, permissibility and the HLEP controls relevant to the proposal are discussed below.

#### **3.3.8.1 Zoning and Permissibility**

The site is located within the R4 High Density Residential Zone pursuant to Clause 2.3 of the Hornsby Local Environmental Plan 2013 (HLEP) (refer to Figure 6 below). The development is defined as 'Seniors Housing.' The objectives of the R4 High Density Residential zone are:

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

Seniors Housing is prohibited under the HLEP in the R4 High Density Residential zone. Notwithstanding, the proposal is permitted pursuant to Section 81 of the Housing SEPP. The provisions of the Housing SEPP prevail to the extent of any inconsistency with the HLEP. The proposed modification would have no impact on the permissibility of the development and is considered consistent with the zone objectives.

It is noted that the application was lodged and determined having regard to the provisions of the former SEPP HS&PD which was repealed by the Housing SEPP. Thus, the original application was assessed under the provisions of the former SEPP. In most relevant aspects, the provisions are the same.

The modified proposal is considered consistent with the site capability and design requirements of the original development and would result in negligible changes with the assessment of the proposal against the Housing SEPP (refer to Part 5.1.3 of the supporting SEE) and is considered acceptable in this regard.

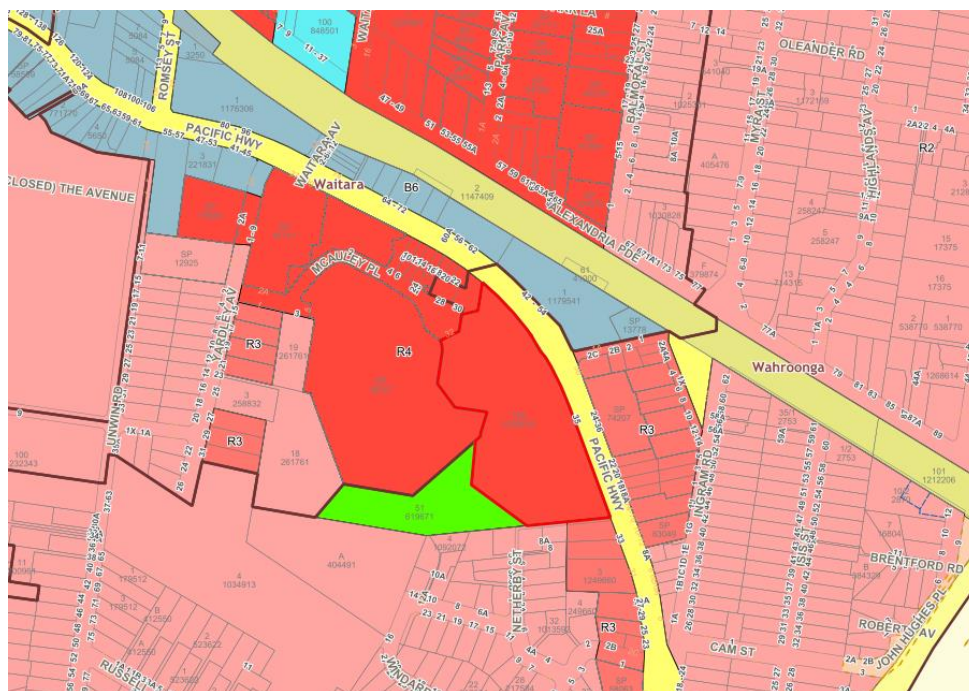


Figure 6: Land Zoning Map

### 3.3.8.2 General Controls and Development Standards (Part 2, 4, 5 and 6)

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

#### Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 12m. The proposal does not comply with this provision; however, the application is seeking consent under the provisions of the Housing SEPP, Clause 8 of the Policy prevails to the extent of the inconsistency. Therefore, compliance with Clause 4.3 of the HLEP is not required.

#### Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site includes a heritage item and is not located in a heritage conservation area. The subject site is listed as item 757, being Lots 1-3, DP 1122662, Nos. 28-32 McAuley Place, Wahroonga, Mercy Life Centre - garden and trees. The inventory identifies a "large site conserving fine group of mature Blue Gums and garden trees including mature pines notable along Pacific Highway of local significance".

The trees of heritage value included cultural plantings and remnant Blue Gum trees and trees forming part of the Blue Gum High Forest (BGHF) which are primarily located along the property boundaries. The assessment of trees on and immediately adjacent to the site identified 78 trees of high BHGF



heritage significance, 22 trees of low to moderate BGHF heritage significance and 4 ornamental plantings of cultural significance.

Along the Pacific Highway frontage there are 68 trees of heritage significance, of which 8 were approved to be removed under the original consent to accommodate vehicle entry points. The impacts of the development on the heritage significance of the site were assessed as acceptable under the original application.

The proposed modification has been designed to avoid the removal of any additional trees of heritage significance from the site. Increased setbacks from significant trees are retained on the modified design to ensure tree protection, health and longevity. Conditions applied to the original consent require an Arborist to monitor the works and ensure compliance with Australian Standards to mitigate any adverse impacts on significant trees.

The proposed modification would not adversely impact on the heritage significance of the site the proposal is acceptable on heritage grounds.

### **Earthworks**

Clause 6.2 of the HLEP states that consent is required for proposed earthworks on site. The proposed modification would not significantly alter the extent of earthworks required to accommodate basement carparks. Conditions were applied to the original consent for sediment and erosion controls, excavation, landfill and environmental management. Subject to the original conditions applied, the proposed modification is acceptable with respect earthworks.

### **Terrestrial Biodiversity**

Clause 6.4 of the HLEP applies to land identified as is mapped as 'biodiversity' on the Terrestrial Biodiversity Map.

A portion of the site (where) is mapped as 'biodiversity' on the Terrestrial Biodiversity Map.

Consideration as to whether the development is likely to have an adverse impact on the condition, ecological value and significance of the flora and fauna of the land.

The proposal as modified has been designed and sited to avoid any significant adverse environmental impact. Conditions applied to the original consent are applicable to the modified proposal and would ensure the protection of flora and fauna on the site.

### **Design Excellence**

Clause 6.8 of the HLEP provides considerations for the delivery of the highest standard of architectural and urban design. The development application was referred to Council's Design Excellence Panel (DEP) on 24 August 2022.

A summary of the DEP advice is outlined below with additional comments on how these matters have been addressed under the amended set of plans/ documentation:

#### **Panel Comment - Desired Future Character**

*The reorientation of the buildings may expose lift overruns and plant equipment to views and vistas opening after the bend on Pacific Highway (to the northwest of the site), and this is a contextual issue that needs to be investigated as the equipment on the roof is not integrated or concealed by a roof feature.*

### Applicant's Response

A visual impact analysis was undertaken of the plant and lift overruns and images provided (Attachment C) demonstrating an accurate representation of eyesight from three different locations that are considered to be the most representative views from Pacific Highway. It is considered that the plant room enclosure and the service stairs would not be visible from the Pacific Highway in any direction of travel. The setback from the building edge and the design of the architectural roof elements combine to ensure that lift overruns and roof access are not visible from the surrounding public domain. The dominant tree canopy also softens views to building elements.

The proposal is considered acceptable in terms of design excellence in this regard.

### Panel Comment - Height

*The submitted drawings show an outline of the previously approved envelope however the lift overruns are not shown thereby not allowing a comparison between the current and previous schemes. The increased height does however reduce solar access to existing Unit D46 by 1 hour. The Panel acknowledges the improvement in the solar access to Units c-63 and E15; however, the Panel considers that an increase in height and additional program should lead to an overall better outcome under a merit assessment. Measures such as additional setbacks at the upper level or further relocation/reorientation of the entry roof feature should be explored to reduce this impact.*

### Applicant's Response

The visual impacts of the roof elements are addressed under the 'Desired Future Character' discussion above. The architectural plans were updated to demonstrate the previously approved envelope including the lift overruns to allow for comparison between the current and previous schemes. The proposed amendments to the previous approved scheme provide access to roof through service stairs. The stairs provide access for maintenance to the roof and roof plant in accordance with work safety requirements.

A revised sun eye study was undertaken and provides further information relating to the solar access to existing Unit D46, with the following outcomes:

- More detailed investigation of the unit suggested that solar access under the approved development did not achieve the requirement level of solar access. The approved DA scheme solar access to Unit D46 was non-complying (10mins of sunlight between 9am-3pm), as a consequence, the proposed modifications do not reduce solar access to Unit D46
- The benefits of the proposed amendments with the additional solar access to Unit C63 and E15 are an overall better outcome for the site.

The proposal is considered acceptable in terms of design excellence in this regard.

### Panel Comment - Setback

*The additional fire egress stairs showing outside the building envelope and within the eastern setback is not supported. A proposal of this scale and generous spaces should be able to easily encapsulate these exits within the building footprint. Setback areas should be characterised by deep soil, improve the landscape and visual quality of the buildings and be clear of these types of intrusions.*

### Applicant's Response

The change in orientation of Building A and B from the approved DA was driven by the following benefits:

- Retain trees to the edge of the stand of large trees to the north of Building A that would otherwise have been removed or adversely impacted.
- No increase impacts on trees along Pacific Highway and the proposed setback allows for additional planting opportunities between the complex and Highway.
- Greater separation between buildings A and E.
- The streetscape frontage to Building A was reviewed and improved in terms of building and entry presentation, and improved continuity of street trees, footpaths and roadside planting.

The relocation of the fire egress to Building B was explored; however, was considered suitable to be retained for the following reasons:

- The proposed landscape in front of the fire stair has tiered planter forms providing an attractive edge to the central breakout terrace.
- These terraces facilitate in change of levels to the Highway, with broad terraced planters with trees, hedges, accent and trailing plants providing layered greening to the end of the central open space.
- The terraced planters seamlessly continue up to and on top of the stair well, with only the last flight of stairs exposed.
- Views of this stairway from Pacific Highway would be limited; and
- The stairway integrates well with the design of the development.

The proposal is considered acceptable in terms of design excellence in this regard.

#### Panel Comment - Building Form, Separation and Layout

*The apartment layouts are generally considered to be satisfactory relative to overall amenity. Any potential acoustic disturbance between sleeping and living spaces and the services areas and units should be addressed in consent conditions.*

*It is unfortunate that the internal corridors of both buildings provide no direct outlook, and it is recommended that the layout be reconfigured to provide this on every level of both buildings. Connecting to the semi enclosed drying court is not considered adequate.*

#### Applicant's Response

It is considered that the overall amended design is an improvement in terms of amenity - refer to sections below for further discussion regarding open spaces and public domain.

Acoustic performance of wall types will be addressed at detailed design, where this may be a condition of consent. The semi-enclosed drying courts have now been removed from the floor plan, which has resulted in improved natural daylight increased façade articulation and the increased opportunity for direct outlook towards adjacent landscaped areas. To the north and to the west, the introduction of window shrouds has successfully increased façade detail and interest, whilst also addressing the concern raised of afternoon sun and solar heat gain

Review of driveway location was completed and on balance the existing proposed location was considered to be the best outcome, being the lowest part of the site. It was considered that locating the driveway between Buildings A and B would interrupt the continuity of the public domain and building pedestrian entries, and also the pedestrian link back to Building E. The scale of the adjoining trees was

considered to be a positive factor to locating the driveway. The trees are taller than the proposed buildings, and the driveway will visually recede into the deep shadows of the trees. In addition, screen planting against the building walls and adjoining open space garden areas will significantly improve the presentation of the driveway from the streetscape. Further to the above, design changes to improve outcomes for the driveway also include:

- Canopy to basement carpark removed, extending the width of the cantilevered balconies that are above the lower portion of the driveway.
- Adding/ adjusting upstand built-in structural planters around the edge of the balconies to allow landscape with significant greening through hedges and trailing plants.
- The balconies and allied landscape edges would provide good visual separation and screening of residents from the driveway. Lower planting towards the east of these balconies focussing views into the forest.
- Residential windows have been adjusted to maximise views to the adjoining open space and tall trees and minimise outlook towards the driveway to the west. The windows adjacent to the driveway have been provided with solid spandrel panels to minimise headlight glare.

#### Panel Comment - Landscaping

*Panel is concerned that the landscape design does not reinforce the existing native canopy and supplementary native plantings. While the Panel recognises that the site is a cultural landscape with both native and exotic plantings a more considered landscape design approach would benefit the proposal.*

#### Applicant's Response

The applicant provided photos (Attachment C) demonstrating that existing trees are tall and dense along Pacific Highway and there is very little opportunity to view the proposed buildings. However, there is a gap in the existing trees along the Highway frontage in the location where motorists have become 'side on' to the Building A frontage, and the view is less prominent. Endemic canopy and screen infill tree planting has been proposed in this location and other opportunities for infill shown on the planting plans.

It should be noted that the previous landscape plan colour render did not indicate existing tree canopies (existing and proposed) accurately. Arborist site detailed survey/ measure, and use of aerials has been updated in the adjusted masterplan. This shows the significant continuity of tree canopy and the infill planting to the single identified gap where a current road entry exists and is to be removed. The new proposed trees contribute to fulfilling Hornsby Councils required endemic tree 'replenishment' planting to offset tree removal from previous project stages.

#### Panel Comment - Open Spaces

*Further resolution is required including along both buildings' edges showing the resolution between the private and public realms. The open spaces that surround the proposed buildings need to be further developed so that a sense of amenity is established. For example, the central open space between the buildings has considerable overshadowing during the day. There is minimal mitigation of the substantial proposed adjacent built form resulting in a canyon like effect subject to wind, overshadowing and lack of human scale. The circulation areas appear to be unresolved with awkward access to community open space. The proposed arrangement of planters to the entry to Building A while resolving level issues result in a poor presentation to the building and sense of arrival.*

#### Applicant's Response

With regard to 'access to community open space', the following aspects of the design have been modified to address the DEP comments:

- Provision of the suggested pedestrian link to the 'Play and Exercise' area below the trees north of Building A, as part of significant design changes to create streetscape continuity.

With regard to 'poor presentation of Building A', the following aspects of the design have been modified to address the Design Excellence Panel comments:

- Additional seating has been proposed adjacent to the building entry
- Increased number and similar rhythm of groups of canopy trees, with 2 groups flanking entry
- Footpaths with planted edges, directly echoing the footpath opposite, and continuation of this substantially for the full length of the road (as laybys and crossings permit)
- Hedges and trailing plants to terraced planters to the building frontage, creating a green pediment to the buildings, and equally a green edge to streetscape views which has been highly successful in the completed landscape opposite

Building B Breakout Terrace general character and amenity has been improved as follows:

- The streetside lawn provides residential identity and visual softening consistent with input during consultation with existing residents.
- The arrival into the area has been visually softened with lower planter walls to leading edges largely eliminating upstand walls presenting to the space, with trailing plants and hedges in the lower planters creating a strong landscape character.
- The series of curved benches set against the planter walls provide activation and amenity, and visual interest and invitation into the area
- The tiered planters at the east end of the space provide layered greening of the level change up to the Highway, with canopy trees rising above framing filtered views to the sky beyond.
- Existing large canopy / screen trees to east end of space, pergola and landscape treatments will ameliorate wind in the area
- The open space between Buildings A and B provides outdoor amenity with strong purpose as a community breakout gathering and social area, as well as general flexibility as a passive seating area at other times. The seating in this area captures the morning and afternoon sun as well as offering a shaded respite area during periods of excessive summer heat.

#### Panel Comment - Privacy and Security

*Privacy impacts generally will be improved if the proposal complies with ADG building separation requirements.*

#### Applicant's Response

The building separation non-compliances are consistent with the original approval. The addition of screens to increase privacy and improve articulation and detail is demonstrated within the amended plans with the inclusion of privacy screens and high-level windows to provide adequate privacy to Buildings A and B.

#### Panel Comment - Sunlight and Ventilation

*It is recommended however that habitable room depth be reviewed to provide compliance with ADG requirements.*

#### Applicant's Response

The habitable room depth and building separation non-compliances are consistent with the original approval. All units offer an open layout with natural ventilation and accordingly, the minor non-compliance is acceptable with respect to residential amenity. The amended proposal is similar in built form and design to the approved development and is acceptable with respect to visual privacy between buildings.

The shadow diagrams indicate that overall, there is an improvement in solar access to units as a result of the proposed modifications.

#### Panel Comment - Vehicle Access and Parking

*The additional number of proposed parking vastly surpasses the required parking. It is also understood that the Applicant will reconsider the number of excess parking spaces and that the parking provision will be closer to that anticipated by the applicable controls in future resubmissions. The Panel encourages the Applicant to proceed in this direction.*

#### Applicant's Response

The parking spaces have been reduced from 188 to 105 spaces. Council Traffic and Safety Branch raised no objection to the number of car parking spacings.

#### Panel Comment - Public Domain

*The general resolution of the building form and the public domain require further resolution, as the resultant quality is considered unsatisfactory. The edges of the proposal and the communal open spaces generally lack nuance and the opportunity for social interaction. The impact of blank walls should be mitigated, and the design and heights should encourage seating. The gathering spaces should provide visual interest, appropriate scale and adequate sunlight.*

*The entry sequence to both buildings should also provide "bump spaces" to encourage informal social interaction. The location of garbage rooms and service spaces adjacent to both entries is also considered unfortunate. Amenity can also be enhanced by the provision of parcel delivery storage given the recent uptake of this service. This is to avoid the unsightly storage of deliveries awaiting collection in both lobbies.*

#### Applicant's Response

The public domain outcomes have been improved as follows:

- The street and open space edges having improved landscape and lowered garden terraces in most areas has visually softened and improved 'greening' of the streetscape and open space areas and improved the building edges and landscape setting.
- Detailing of open spaces and streetscape has been refined and includes the 'nuance and opportunity for social interaction' that was requested.
- The reduced garden walls and inclusion of multiple seating edges address the concern regarding 'blank walls' created by tall garden walls addressing open space and streetscape



- The pedestrian entry sequence to both buildings has been significantly improved, with broader steps to Building A and seating height planter walls, and significant activation and visual interest with forecourt seating to Building A.
- The design of lobby spaces to Buildings A & B allows for sufficient seating and waiting areas to encourage informal social interaction.

#### Panel Comment - EDS

*The current proposal does not appear to address solar gain on the northern and western facades, and this is required in any resubmission to the Panel. Appropriate external solar control devices will not only add to the further resolution to the facades but will increase energy efficiency. The inclusion of ceiling fans is also strongly recommended to improve amenity and efficiency.*

*Consideration should also be given to the replacement of instantaneous gas hot water heaters currently shown on each balcony with a centralized electric system. This will improve energy efficiency and improve the buildings presentation. Any HVAC or other forms of equipment located on the balconies should be adequately screened or concealed from view.*

#### Applicant's Response

Detailed sun shading studies were undertaken to ensure ADG compliance with respect to solar access. The drawings demonstrate how the proposed solar control elements affect the shading area of a typical window on the North and West façades in comparison with a window without the solar control element. The study has been conducted at the summer solstice. The outcome is:

- On the north facade, through the implementation of 250mm depth sun shading hoods, the shading area of the window has been highly increased, especially during the hottest hours of the day (11 am to 2 pm).
- On the west facade, through the implementation of 250mm depth sun shading elements, a substantial increase of shading area from 1 pm to 2 pm has resulted in improved internal comfort for the habitable rooms facing West.

As the owner-operator of the facility, Catholic Healthcare indicated that they would prefer to maintain instantaneous gas hot water heaters in order to maintain a consistent system throughout all buildings on the site. The gas hot water heaters would be properly recessed into the external walls maintaining a slick appearance and will be painted to blend with the external colour scheme.

As detailed above, the application has undergone a detailed design review with the objective of ensuring an adequate level of design excellence. Council considers that the advice provided by the DEP has been adequately addressed and the development as proposed is consistent with the requirements of Clause 6.8 of the HLEP.

### **3.4 Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))**

The relevant EPI's are outlined in Section 3.4 of this report. There are no proposed instruments that require consideration under this application.

### **3.5 Provisions of any Development Control Plan (s4.15(1)(a)(iii))**

The following Development Control Plan is relevant to this application:

- *Hornsby Development Control Plan 2013 ('the DCP')*

The DCP applies to all land within Hornsby Shire and came into effect on 11 October 2013. As discussed in Section 3.4.8 of this report, Seniors Housing is prohibited within the RU4 zone pursuant to LEP and therefore the built form controls within Part 3 of the DCP are not applicable. However, the relevant general provisions within Part 1 and 9 of the DCP are applicable to the development. This includes provisions relating to heritage conservation areas, stormwater management, waste management, tree and vegetation protection, biodiversity and earthworks. These matters are considered throughout this report.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Hornsby Shire Council S7.11 Development Contributions Plan 2020-2030*

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to development that involves additional residential dwellings. However, as the application is made by a social housing provider, a contribution is unable to be levied in accordance with the Ministerial Direction.

### **3.6 Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iia))**

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

### **3.7 Provisions of Regulations (s4.15(1)(a)(iv))**

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- If demolition of a building proposed - provisions of AS2601.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

### **3.8 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

#### **3.8.1 Context and setting**

As outlined in this report, the proposed seniors housing development is considered to appropriately respond to its context and setting and represents a development that is appropriate for the constraints of the site and the surrounding built environment.

#### **3.8.2 Access and traffic**

The proposed development would not detrimentally impact on traffic around or through the site, as detailed in the supplied Traffic Impact Assessment prepared by The Transport Planning Partnership. The development represents a net loss of 1 independent living unit. Access to the site has not been modified by the proposed development.

### **3.8.3 Public Domain**

The proposed development would have negligible impact on the public domain surrounding the site, despite its non-compliance with the height of buildings development standard contained within Housing SEPP. With respect to the internal area of the site, whilst it is noted that the village is not “public” land, access into the site is not restricted. The proposed development would be compatible with the existing internal built environment and would contribute positively to streetscape character. The proposed modifications to open space areas would assist in creating more useable spaces for residents, as well as increase connectivity across the complex.

### **3.8.4 Utilities**

With the exception of upgraded on-site stormwater detention and water quality systems, no further changes are proposed in this regard.

### **3.8.5 Heritage**

Refer to heritage discussion under 3.4.8.2 of this report.

### **3.8.7 Water/ air/ soils impacts**

Additional OSD infrastructure and Water Quality/ Bio Retention System are required as part of this proposal and conditions to reflect these requirements are conditioned accordingly.

Contamination and air quality were assessed under the original application and no further information was required in this regard for the modification application.

### **3.8.8 Flora and fauna impacts**

This modification application involves the removal of three additional trees including a Sydney Blue Gum of poor health and two Gosford Wattle trees which were not previously identified on the site, and which are located within the approved building footprint and the modified building footprint.

The modified location of the buildings provides further protection and less encroachment into a number of significant trees along the Pacific Highway which is considered an improved environmental outcome in terms of tree preservation.

No concern was raised by Council to the removal of the trees, as supported by the Arboricultural Impact Assessment prepared by Landscape Matrix. Conditions have been amended accordingly as per Attachment A of this report.

### **3.8.9 Natural environment**

The modification would not have any additional impact on the natural environment than that approved under the original consent.

### **3.8.10 Noise and vibration**

Noise and vibration associated with construction impacts are expected and can be mitigated via the imposition of appropriate conditions of development consent. As discussed elsewhere in this report noise and vibration impacts to proposed dwellings have been considered and appropriate conditions are recommended to be applied to the development.

### **3.8.11 Natural hazards**

Engineering works to contain an overland flow path have been completed as part of Stage 1 of the development. Council's engineering assessment confirmed that the proposed modified proposal is acceptable with respect to the flooding constraint of the site.

The original development application was integrated development requiring General Terms of Approval from the NSW Rural Fire Service (RFS). The modified proposal was not required to be referred the RFS for comment as the site is no longer identified as bushfire prone land. No objections were raised to the modified development in this regard and the NSW RFS conditions would remain unchanged.

### **3.8.12 Safety, security and crime prevention**

CPTED Principles have been considered into the design and no concerns are raised. Condition No. 69 was applied to the consent for safety and security measures to be installed in the unit buildings and this condition is relevant to the modified proposal.

### **3.8.13 Social impact**

The proposal as modified would have a positive social impact within the locality by providing for housing for seniors and associated community facilities. The proposal also increases desirable seniors housing stock which may assist in freeing up large-scale free-standing homes in the area for re-use by families. Addition of further population in a well serviced area is also a positive economic factor.

### **3.8.14 Economic impact**

This proposal as modified would achieve a positive economic impact on the locality via employment generation and an increase in demand for local services.

### **3.8.15 Site design and internal design**

As detailed in this report, the proposed development is suitable for the constraints of the site and is of an appropriate internal design.

### **3.8.16 Construction**

Construction impacts can be adequately controlled via the imposition of conditions recommended at the end of this report. Due to the scale of the construction proposed a full construction and traffic management plan (CTMP) is required. The applicant has provided an initial CTMP which has been assessed by Council. No objections are raised to the initial CTMP document.

### **3.8.17 Cumulative impacts**

The proposed development would not result in any cumulative impacts. The development represents a net loss of 1 independent living unit across the site.

Accordingly, it is considered that the proposed modification would not result in any significant adverse impacts in the locality as outlined above.

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

Section 4.15(1)(c) of the Act requires Council to consider "*the suitability of the site for the development*".

In this assessment of the original application, it was determined that the site's attributes are conducive to the seniors development. The proposed modification would not have any impact with respect to the suitability of the site for the development. Relevant matters are addressed as follows:

### 3.9.1 Flooding

Engineering works to contain an overland flow path have been completed as part of stage 1 of the development. Council's engineering assessment confirmed that the proposed modified proposal is acceptable with respect to the flooding constraint of the site.

### 3.9.2 Bushfire

The original development application was integrated development requiring General Terms of Approval from the NSW Rural Fire Service (RFS). The modified proposal was not required to be referred the RFS for comment as the site no longer identified as bushfire prone land. No objections were raised to the modified development in this regard and the NSW RFS conditions would remain unchanged.

### 3.10 Section 4.15(1)(d) - Public Submissions

Submissions are considered in Section 4.3 of this report.

### 3.11 Section 4.15(1)(e) - Public interest

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

The modified proposal would substantially maintain the approval for a seniors housing development comprising 167 independent living units (reduction of 1 unit) and a 122 bed residential care facility. The proposal is consistent with the Housing SEPP and would increase housing supply for seniors in Hornsby Shire. The modified proposal would result in a positive impact for the community and would be in the public interest.

### 3.12 Part 5 of the Environmental Planning and Assessment Regulation 2021

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 5** below.

**Table 5: Consideration of the Requirements under the Regulation**

Matter	Comment	Comply
<b>Clause 100 Application for modification of development consent</b>		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by the owner of the land being Catholic Healthcare Limited.	Y
NSW Aboriginal Land Council consent required for land owned by	The land is not owned by a Local Aboriginal Land Council and consent is not required.	N/A

a Local Aboriginal Land Council (CI 98(6)).		
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the Regulation.	Y
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y
Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	The proposed modification is to modify the original consent under Section 4.55(2) to modify the approved development and is not to correct a minor error, misdescription or miscalculation.	Y
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification given there are no significant changes to the external building form or features. The modified proposal would not significantly increase the perceived bulk and scale of the approved development. Buildings A and B are proposed to increase from five to six storeys, however the proposed sixth floor is recessed and would be screened by established and proposed vegetation along the Pacific Highway frontage. Any other impacts were considered in the original proposal, which was supported by Council.	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	N/A	N/A



Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Y
Whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to Section 4.55(2) of the EP&A Act.	Y
BASIX Certificate (CI 100(3))	The proposed modification does involve BASIX development and an updated BASIX Certificate has been provided.	Y
Penrith Lakes Development Corporation (CI 101)	N/A	N/A
Qualified designer statement for residential apartment development (CI 102)	N/A	N/A
Mining and petroleum development consents (CI 102)	N/A	N/A
Notification and exhibition requirements (CI 105-112)	Refer to Section 4.3 of this report.	Y
Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	The modification application has been referred to the relevant concurrence and approval bodies as outlined in Section 4.1 of this Report.	Y

## 4 REFERRALS AND SUBMISSIONS

### 4.1 Agency Referrals and Concurrence

The Section 4.55(2) modification application was not required to be referred to any agencies for comment or concurrence.

Whilst the original proposal was referred to the Transport for NSW (formerly RMS), the modified proposal was not required to be referred to TfNSW as the proposal would not alter the two vehicular entry points from the Pacific Highway, unit numbers would not be increasing and the overall parking demands on the site are not significantly increased as a result of the modified development. Council's traffic assessment concludes that the proposal as modified would not have any adverse impact on the safety, efficient and ongoing operation of Pacific Highway and is acceptable with respect to Section 2.119.

Additionally, the original development application was integrated development requiring General Terms of Approval from the NSW Rural Fire Service (RFS). The modified proposal was not required to be referred the RFS for comment as the site no longer being identified as bushfire prone land.

## 4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **Table 6**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

**Table 6: Consideration of Council Referrals**

Officer	Comments	Resolved
Engineering	Comments received, amended stormwater management plans adequately addressed initial concerns/RFI and additional Stage 3 On-site Stormwater Detention and Water Quality/Bio Retention System conditioned recommended accordingly.	Yes
Traffic	Comments received; confirming that the provision of 105 parking spaces was approximately 10% above the minimum parking rates and an acceptable outcome from Traffic and Parking perspective.  Removal of boom gate requirement to McAuley Place also considered acceptable for reasons outlined in the supporting Traffic and Parking Assessment	Yes
Tree	Comments received, no concerns with additional tree removal. Conditions amended accordingly.	Yes
Waste	Comments received; no further concerns, subject to updated conditions to reflect the modified development.	Yes
DEP	Design Excellence Panel advice received and amended plans submitted to address concerns, refer to discussion under Section 3.3 of this report.	Yes

## 4.3 Notification and Community Consultation

The modification application was notified in accordance with the Council's Community Engagement Plan from 30 June 2022 until 22 July 2022. The notification included the following:

- A sign placed on the site.
- Notification letters sent to adjoining and adjacent properties (approx.100 notification letters); and
- Notification on the Council's website.

The Council received one unique submission, objecting to the proposal. The issues raised in this submission are considered in **Table 7** below.

**Table 7: Community Submissions**

<b>Issue</b>	<b>Submissions</b>	<b>Council Comments</b>
Concerns with regards to existing Building C and solar access and amenity impacts on their property at No. 8A Netherby Street.	1	Amenity impacts associated with Building C are not a matter for consideration under this application as no changes are proposed to this building.
Concerns regarding proposed Buildings A and B height and further privacy impacts to their property and further noise and dust levels during construction.	1	Amenity impacts to the nearby property at No. 8A Netherby Street from Buildings A and B would be negligible due to separation of the buildings from this site, mostly shielded by building C which is already constructed. Appropriate conditions are recommended to manage noise and dust levels during construction.

## 5 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:

### 5.1 Design Excellence

Clause 6.8 of the HLEP provides considerations for the delivery of the highest standard of architectural and urban design. The development application was referred to Council's Design Excellence Panel (DEP) on 24 August 2022.

A summary of the DEP advice is outlined in Section 3.4.8.2 of this report with additional comments on how these matters have been addressed under the amended set of plans/ documentation. The application has undergone a detailed design review with the objective of ensuring an adequate level of design excellence. Council considers that the considerations provided by the DEP have been adequately addressed and the development as proposed is consistent with the requirements of Clause 6.8 of the HLEP.

### 5.2 Building Height, Bulk and Scale

The development remains compatible with the character of the surrounding area in terms of use and level of activity.

The modification application includes changes to the building envelopes for Buildings A and B. Additional accommodation has been provided by including an additional storey although the increase in building height to the top of the roof is only 1.3 metres for Building A and 2.27 metres for Building B. Whilst the number of units has not increased, an increase in 2-3 bedroom units are proposed to cater for increased market demand in this regard.

The proposed buildings provide consistency of building bulk, height and scale across the precinct with the bulk and scale is still aligned with development as approved. Distinct volumes of the buildings complement the street character, height and scale of the development. Articulated volumes for

Buildings A and B reflect the existing character of McQuoin Park and are sympathetic to the location on the site and its context.

The additional height allows the footprints of the buildings to be slightly reduced, allowing greater opportunity for setbacks adjacent buildings, protection of trees and vegetation and provision of new landscaping and the proposed changes are considered acceptable in this regard. Further discussion provided throughout report.

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## 6 CONCLUSION

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This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation 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 that the application can be supported.

The application proposes a Section 4.55(2) modification to an approved seniors living development including amendments to Independent Living Units within Buildings A and B associated with Stage 3, resulting in an overall reduction in ILU's from 168 to 167, minor changes to the orientations of the buildings, an increase in height of buildings from 5 to 6 storeys and re-configured basement to provide additional car parking on site.

On submission from a nearby property owner was received during the public exhibition period. The matters raised in the community submission have been addressed in the body of this report and do not warrant refusal of the application.

The development is substantially the same development as the development for which consent was originally granted. The proposed modification is assessed as satisfactory with respect to the Housing SEPP and HLEP.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

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## 7 RECOMMENDATION

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It is recommended:

- That the Modification Application (DA/394/2015/E) for modification to Independent Living Units - Buildings A and B - Stage 3 of the approved seniors living development at 35 Pacific Highway, Wahroonga be approved by the Sydney North Planning Panel pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, subject to the draft conditions of consent attached to this report at Attachment A; and
- Pursuant to Clause 118 of the Environmental Planning and Assessment Regulation 2021, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

- Attachment A: Draft Conditions of Consent (agreed to by Applicant 17/02/23)
- Attachment B: Architectural Plans
- Attachment C: Site photos to support Design Excellence matters