

**COUNCIL SUPPLEMENTARY REPORT**

<b>Panel Reference</b>	<b>PPSSNH-353</b>
<b>DA Number</b>	117/2017 S4.55(2)
<b>LGA</b>	Lane Cove Council
<b>Proposed Development (Original Description)</b>	Construction of a seniors housing development comprising 70-bed residential aged care facility, 82 independent living units/self-contained dwellings, with basement car parking for 122 vehicles, new public park and facilities and landscaped through-site link.
<b>Proposed Modification S4.55(2) Description</b>	Construction of seniors housing development comprising 92 independent living units, basement car parking for 181 vehicles, new public park and facilities and landscaped through-site link.
<b>Street Address</b>	266 Longueville Road Lane Cove
<b>Applicant/Owner</b>	Longueville The Village Pty Ltd / Lane Cove Council
<b>Date of S4.55(2) lodgement</b>	29 November 2022
<b>Number of Submissions</b>	65
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	Total Cost of the Development is \$81,345,000.00
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021;</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021;</li> <li>• State Environmental Planning Policy (SEPP) No. 65 Design Quality of Residential Flat Development;</li> <li>• State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;</li> <li>• Lane Cove Local Environmental Plan 2009</li> <li>• Lane Cove Development Control Plan 2009</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<p>Attachment 1 – Record of Deferral SNPP 19 May 2023</p> <p>Attachment 2 – Site Compatibility Certificate 10 June 2021</p> <p>Attachment 3 - SNPP DA Determination and Assessment Report</p> <p>Attachment 4 - Legal Advice from Applicant's Solicitors dated 26 May 2023</p> <p>Attachment 5 Report by Critical Success Solutions dated 1 June 2023 (Aged Care Needs)</p> <p>Attachment 6 Report by Edgewater Connection dated 26 May 2023 (substation)</p> <p>Attachment 7 Draft Modified Conditions</p>
<b>Report prepared by</b>	Robert Montgomery, Principal Montgomery Planning Solutions (Independent Consultant)
<b>Report date</b>	25 June 2023

**Summary of s4.15 matters**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

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**Legislative clauses requiring consent authority satisfaction**

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

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

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**Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **No**

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**

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

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**Conditions**

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

## **Declaration by Author**

This Supplementary Report was prepared by Robert Montgomery, Principal, Montgomery Planning Solutions.

Other than being engaged as an independent consultant by Lane Cove Council, I have no association with the applicant or their professional consultants. Also, I do not carry out any private consultancy work within the Lane Cove local government area.

I am an expert member of the Lane Cove Local Planning Panel

I hereby state that I have no conflict of interest in the preparation of this Assessment Report.



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June 2023

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## Executive Summary

This application to modify the approved development was considered by the Sydney North Planning Panel on 17 May 2023. The Panel resolved to defer its decision as follows:

*“The Panel believes several key issues remain unresolved and decided to defer the determination to obtain additional information on the following;*

1. *Permissibility of the modification as proposed (with the absence of aged care beds) having regard to the current Site Compatibility Certificate (SCC); in particular, the development as described in Schedule 1 which gives permissibility for "Development for up to 70 aged care beds and 82 independent dwellings, ancillary facilities, basement carparking and landscaping;*
2. *Whether the modified development as proposed is substantially the same as the development for which the consent was originally granted, having particular regard to the essential elements of the original development consent and the relationship with the SCC;*
3. *The reasons given by the consent authority for the grant of the consent that is sought to be modified and the information relied upon to form those reasons having regard to S4.55(3) of the Act;*
4. *Clarification of intended accommodation and care arrangements for future residents requiring advanced care and how that may have changed from the original development consent having regard to clause 45(6)(a)(i) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;*
5. *Clarification of the impact of industry changes on the nature of these facilities which originally sought to accommodate independent living and advanced care;*
6. *Clarification of changes to balconies and privacy arrangements; and*
7. *Refinement of conditions relating to location of the substation and public access for the through site link.”*

The applicant responded on 7 June 2023 with additional information to assist the Panel. Table 1 below provides a summary of the responses by the applicant and Council's independent assessor.

**Table 1: Summary of Response to SNPP Deferral Matters**

Further Information Requested	Response
1. Permissibility of Modification	Additional legal advice provided by applicant – Mills Oakley 26 May 2023. Permissibility confirmed.
2. Whether the development as proposed to be modified is substantially the same as the development originally approved.	Additional legal advice provided by applicant – Mills Oakley 26 May 2023. The “substantially the same” test is satisfied.
3. Reasons for original determination of DA.	The reasons and assessment report are attachment 3. Also discussed in applicant's legal advice.
4. Clarification of accommodation and care arrangements.	The applicant submitted a report by Critical Success Solutions dated 1 June 2023. The Mills Oakley legal advice also considers this matter. Clear details of on-site support services provided.
5. Impact of industry changes on nature of aged care facilities	The applicant relies on the report by Critical Success Solutions dated 1 June 2023, which

	provides details on changes in the industry and government policy.
6. Clarification of changes to balconies.	The applicant has responded to this matter, and demonstrated that there are no adverse impacts.
7. Refinement of conditions re substation and public access through-site link.	Additional/revised conditions have been included in the recommendation.

This report provides a review of the additional information submitted in response to the SNPP deferral and amended conditions in relation to the substation and through-site link.

It is concluded that the applicant has satisfied the requests of the Panel for additional information and that the proposal satisfies all relevant statutory requirements. The application to modify the development consent is therefore recommended for approval.

This report must be read in conjunction with the assessment report submitted to the SNPP on 17 May 2023.

## 1. Permissibility of Modification

Panel Request 1: *Permissibility of the modification as proposed (with the absence of aged care beds) having regard to the current Site Compatibility Certificate (SCC); in particular, the development as described in Schedule 1 which gives permissibility for "Development for up to 70 aged care beds and 82 independent dwellings, ancillary facilities, basement carparking and landscaping*

The Mills Oakley legal advice provided by the applicant, in summary, submits that:

- The Site Compatibility Certificate (SCC) does not form part of the development consent;
- The existence of the SCC is merely a circumstance that existed when the development consent was granted;
- The terms of the SCC are not relevant and must not be considered when applying the 'substantially the same test';
- In any event, even if regard was had to the terms of the SCC, the proposed modification does not raise any issue of concern. The intention of the SCC was that there was no minimum number of aged care beds, nor was the provision of aged care beds essential.

**The advice is consistent with previous legal advice from Andrew Pickles SC and with my assessment report provided to the Panel on 17 May 2023. Accordingly, it is considered that the modification is permissible, and the Panel is not required to revisit the Site Compatibility Certificate in determining the modification.**

## 2. Substantially the Same Development

Panel Request 2: *Whether the modified development as proposed is substantially the same as the development for which the consent was originally granted, having particular regard to the essential elements of the original development consent and the relationship with the SCC;*

The Mills Oakley legal advice provided by the applicant, in summary, submits that:

- There is no impediment to consent authority approving the modification in terms of the test under s4.55(2) of the EP&A which requires "...development to which the

consent as modified relates is substantially the same development as the development for which consent was originally granted...”;

- The requirements of SCC were only a matter for consideration in the original Development Application;
- As the terms of the SCC do not form part of the development consent, they are not relevant (and must not be considered) when applying the ‘substantially the same’ test;
- The SCC certified “Seniors Housing” as the applicable compatible land use;
- The more detailed description in the SCC Schedule 2 included the words ‘up to’ with regards to aged care. As such, there was no minimum number of aged care beds required in a Seniors Housing development and the provision of aged care beds was not essential.

**The advice is consistent with previous legal advice from Andrew Pickles SC and with my assessment report provided to the Panel on 17 May 2023. Accordingly, it is considered that the modified development satisfies the “substantially the same” test and it is open to the Panel to approve the modification.**

### 3. Reasons for Original Approval

Panel Request 3: *The reasons given by the consent authority for the grant of the consent that is sought to be modified and the information relied upon to form those reasons having regard to S4.55(3) of the Act;*

In determining the original development application on 6 September 2021, the Sydney North Planning Panel cited the following reasons:

#### **REASONS FOR THE DECISION**

*The Panel determined to uphold the Clause 4.6 written request to vary the height of building development standard and approve the development application for the reasons in the Independent Assessor’s DA Assessment Report (11 July 2018) and Supplementary Report (4 August 2021) and as set out below.*

*The subject site is zoned R4 High Density Residential under the LCLEP and development for the purposes of seniors housing is permissible with consent. The Panel noted that the land was rezoned by Lane Cove Council from RE1 Public Recreation to R4 High Density Residential in 2015 and then reclassified to operational land under the provisions of the Local Government Act 1993. It was clear to the Panel that the policy decision of the Council to change the land use from open space had occurred many years ago and that this was not a matter relevant to the consideration of this development application.*

*The Panel recognised that the site has a current Site Compatibility Certificate issued under Clause 25(4)(a) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (HSPD SEPP). This Certificate effected an increase in the maximum permissible floor space ratio from 1.1:1 to 1.6:1.*

*The development application has had a very long history. It came before the Panel on 11 July 2018 and the Panel resolved to defer its decision to seek the following further information:*

1. *Detailed site investigation under State Environmental Planning Policy No 55 - Remediation of Land to demonstrate that the site is suitable for residential development.*
2. *Independent peer review of the traffic assessments.*

3. *Assessment of the ecological impact to ensure that the development does not significantly impact flora and fauna on the site and on the adjacent land zoned E2.*
4. *Assessment of visual impact from the golf course, the ridge line to the east and from Richardson Street West.*
5. *Plans and supporting information provided to the Department of Planning, Industry and Environment supporting the application for Site Compatibility Certificate dated 6th July 2017.*
6. *Calculation of the GFA and FSR based upon the HSPD SEPP.*

*The Panel also requested the Applicant to submit amended plans which:*

1. *Increase the setback on the southern boundary by at least one metre without any decrease on the northern side, while creating a two-metre landscaped strip towards Timbertops (268-270 Longueville Road, Lane Cove) to provide landscape screening.*
2. *Based upon the Ecological Assessment, adjust the eastern boundary setback if required.*

*An amended development application returned to the Panel on 1 September 2021. The Panel agreed with the Independent Assessor that the requested additional information had been provided, the proposed development had been appropriately amended and that the reasons for deferral of determination of the development application had been addressed and resolved, with the exception of the calculation of the gross floor area and floor space ratio. The Panel concurred with the condition 2 requiring the Applicant to provide amended plans which demonstrate that the floor space has been reduced to 1.6:1, but further amended the condition to require the Applicant to provide the amended plans prior to the issue of a construction certificate.*

*The Panel agreed that the building appropriately presents to Longueville Road as a two storey built form. The area of the development which breaches the height limit is restricted with the highest breaches being in the centre of the building footprint, reducing its visibility and amenity impacts on adjoining properties. The landscape setting of the locality and that proposed on the site will further reduce the visibility of the proposed development.*

*The impact of the proposed development on the existing traffic and parking situation in the locality was raised as a major issue by numerous written and oral submissions. The Panel noted that the peer review of the Applicant's traffic assessment, once the modelling was updated, confirmed that the traffic generation potential of the proposed development would not result in a reduction in the level of service on the nearby streets and intersections nor unacceptable traffic implications. Further, the traffic assessment factored in forecast changes in traffic. Potential impacts on the bushland was also an issue raised by numerous written and oral submissions. The Panel noted that Council's ecologists reviewed the Applicant's ecological assessment and concluded that it was satisfactory with additional conditions of consent to ensure the protection and enhancement of the bushland. In particular, a condition of consent has been included for a detailed Biodiversity and Vegetation Management Plan to be prepared to manage vegetation removal pre-construction and to address protection of native vegetation, weed control and rehabilitation of any disturbed areas post-construction. The Panel noted that the proposed built form had been adjusted to retain Trees 92 and 93.*

*It was noted by the Panel that NSW Rural Fire Service had been appropriately consulted by Council, as required by Clause 27(3) of the HSPD SEPP and that concurrence was not required as the proposed development was not integrated development.*



*The Panel agreed that the creation of a legal easement through the site, in favour of Timbertops (268-270 Longueville Road), was an appropriate mechanism to secure access.*

*The significant length of time since the deferral of the application and consideration of all the matters raised by the community required the Panel to request the following prior to making its determination:*

- A revised Clause 4.6 written request to vary the height of building development standard, given there had been a change in the objectives of the development standard since the written request had been submitted.*
- Consideration from the Independent Assessor on the application's consistency with the proposed new draft SEPP (Housing), given this draft SEPP had been publicly exhibited since the application had been lodged with Council.*
- Consideration from the Independent Assessor on Planning for Bushfire Protection (2019), which had been introduced since the application had been lodged with Council.*

*This information was received by the Panel on 3 September and the Panel agreed that it satisfactorily addressed all required matters.*

*The Panel acknowledged the Independent Assessor's Memo to the Panel (30 August 2021) and agreed that the conditions of consent, with the following amendments, addressed various concerns raised by the community:*

- Condition 2.2 to be amended to require that amended plans demonstrating the floor space ratio of 1.6:1 be provided to Council's satisfaction prior to issue of any construction certificate.*
- A new condition requiring an operational management plan.*
- A new condition requiring the residents of the development to be of the age as required by the HSPD SEPP.*
- Condition 60.1 to be amended to change the construction hours to that of a nearby, recently approved seniors housing development.*
- A new condition ensuring the provision of a sprinkler system.*

*The Panel agreed with condition 9 regarding the development contributions, condition 153 regarding the right of carriageway and condition 155.1 regarding the positive covenant and therefore made no amendments to these conditions.*

Attachment 3 is a copy of the assessment report and determination for the original development application. It is noted that these documents were provided to the Panel as attachments to the assessment report on 17 May 2023.

Section 4.55(3) of the *Environmental Planning and Assessment Act, 1979* states:

*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."*

The Mills Oakley legal advice provided by the applicant submits, in summary, that:

- In considering these reasons, the consent authority must merely consider the reasons given by the consent authority, but will not be legally bound to apply them;
- It is open to the Panel to determine the modification application by way of approval even if it considers that an element of the proposed modification is inconsistent with the reasons of the consent authority for the original development consent. It is a matter for the Panel to determine the weight given to the original reasons for the grant of consent.

**It is considered that on review of the reasons for the original consent, the proposed modification is not in conflict with those reasons. It is recommended that the Panel consider the reasons (as required by Section 4.33 of the Act) and determine the application. It is agreed that it is open to the Panel to approve the modification even if it considers that an element of the proposal is inconsistent with the reasons.**

## 4. Accommodation and Care Arrangements

**Panel Request 4:** *Clarification of intended accommodation and care arrangements for future residents requiring advanced care and how that may have changed from the original development consent having regard to clause 45(6)(a)(i) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;*

Clause 45(6)(a)(i) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* provides that a consent authority may only grant consent to a development application if:

*“(a) the consent authority is satisfied, on written evidence, that—*

*(i) the proposed development will deliver on-site support services for its residents,”*

As discussed in the Mills Oakley legal advice, this requirement relates to development applications and not an application to modify an existing consent. Notwithstanding, the applicant has demonstrated that on-site support services will be delivered for the residents of the proposed independent living units (as was always proposed).

The applicant refers to the report prepared by Critical Success Solutions and confirms that the following services will be provided on site:

- 3 meals per day provided either in the on-site dining room or resident’s dwelling’
- Personal care,
- Home nursing visits,
- Assistance with housework,
- Access to general practitioners,
- Various home care program requirements set out by the Aged Care Quality and Safety Commission such as, transportation assistance, around-the-clock security, medication management, social activities and leisure, personal care assistance and access to allied health professionals such as physiotherapy, dietetics and occupational therapy.

**It is considered that the applicant has addressed the requirements of clause 45(6)(a)(i) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* in relation to on-site support services. A proposed additional condition (No. 169) will ensure that on-site support services are provided on an ongoing basis.**

## 5. Industry Changes

Panel Request 5: *Clarification of the impact of industry changes on the nature of these facilities which originally sought to accommodate independent living and advanced care*

The applicant has submitted a report prepared by Critical Success Solutions which addresses this matter. The applicant summarises the key messages derived from the report as follows:

- Since the original development application for Seniors Housing at the site was submitted there have been noticeable shifts in the preferences for living arrangements as Australians age.
- The Royal Commission into Aged Care Quality and Safety (Royal Commission) commissioned in 2018, with a final report delivered in 2021 highlighted a shift in Australians of all ages wanting to be assisted to live independently (where possible) in their own home during their retirement years rather than ever having to go to an aged care facility.
- The change to Aged Care in the Home is supported through a shift in design and operations of seniors housing, with onsite support services, Home Care Packages and Commonwealth Home Support Program.
- This change allows flexibility and choice to older Australians.

**It is considered that the applicant has addressed this matter.**

## 6. Changes to Balconies

Panel Request 6: *Clarification of changes to balconies and privacy arrangements*

The applicant has provided the following table which summarises the balconies and privacy arrangements compared to the original approved development:

**Table 2: Key Changes to Balconies and Privacy Arrangements**

LEVEL	NORTH ELEVATION	SOUTH ELEVATION	EAST ELEVATION	WEST ELEVATION
1.	No substantive change in size or location of balconies	<b>Unit 1.07.</b> No substantive change in size or location of ground floor terrace	No substantive change in size or location of balconies	No Balconies, subterranean
2.	No substantive change in size or location of balconies	<b>Unit 4.19</b> Balcony location substantially unchanged, extended further to bushland (east) Privacy Screen Included Setback 15.2m from south boundary.	No substantive change in size or location of balconies	No Balconies, subterranean
3.	No substantive change in size or location of balconies	<b>Staff Courtyard &amp; Unit 3.12</b> Terrace areas reduced. Area access reduced from 7 RAC rooms to Staff Courtyard & 1 ILU Courtyards, at lower level that driveway and situated behind retaining wall. Terrace Area to ILU required to meet ADG Private Open Space requirement. Setback 6.9m from south boundary.  <b>Unit 3.11</b> Balcony location substantially unchanged, extended further to bushland (east)	No substantive change in size or location of balconies	No Balconies, subterranean

LEVEL	NORTH ELEVATION	SOUTH ELEVATION	EAST ELEVATION	WEST ELEVATION
		Privacy Screen Included Setback 15.2m from south boundary.		
4.	<p><b>Unit 4.19</b> Balcony size &amp; location adjusted. Setback 12.1m from north boundary.</p> <p><b>Units 4.03 &amp; 4.04</b> New balconies as floor changed from RAC to ILU. Required to meet ADG Private Open Space requirement. Setback 12.1m from north boundary.</p> <p><b>Units 4.09 &amp; 4.10</b> New balconies as floor changed from RAC to ILU. Required to meet ADG Private Open Space requirement. Setback 25.1m from north boundary.</p>	<p><b>Units 4.15</b> New balconies as floor changed from RAC to ILU. Required to meet ADG Private Open Space requirement. Privacy Screen Included Setback 11.8m from south boundary.</p> <p><b>Units 4.14 &amp; 4.13</b> New balconies as floor changed from RAC to ILU. Required to meet ADG Private Open Space requirement. Privacy Screen Included Setback 12m from south boundary.</p> <p><b>Units 4.12</b> New balconies as floor changed from RAC to ILU. Required to meet ADG Private Open Space requirement. Privacy Screen Included Setback 15.2m from south boundary.</p>	<p><b>Units 4.11 &amp; 4.10</b> New balconies as floor changed from RAC to ILU. Required to meet ADG Private Open Space requirement. Balcony locations consistent with other levels No Impact Elevation overlooks bushland area</p>	No Balconies, subterranean
5.	No substantive change except, provision of new ad grade courtyard of <b>Unit 5.18</b> shielded by 1.8m fencing.	<p><b>Staff Courtyard</b> reduced in size.</p> <p><b>Unit 5.14 &amp; 5.13</b> Balcony size &amp; location substantially unchanged Privacy Screen Included Setback 11.8m from south boundary.</p> <p><b>Unit 5.12</b> Balcony location substantially unchanged, extended further to bushland (east) Privacy Screen Included Setback 15.2m from south boundary.</p>	<p><b>Units 5.10 &amp; 5.11</b> No substantive change in size or location of balconies except for addition of Juliet balcony of bedrooms.</p>	<p><b>Units 5.18 &amp; 5.19</b> Terrace location and size updated and now ILU instead of commercial space. No Impact Elevation overlooks Longueville Road</p>
6.	No substantive change in size or location of balconies	<p><b>Unit 6.15, 6.14 &amp; 6.13</b> Balcony size &amp; location substantially unchanged Privacy Screen Included Setback 11.8m from south boundary.</p> <p><b>Unit 6.12</b> Balcony location substantially unchanged, extended further to bushland (east) Privacy Screen Included Setback 15.2m from south boundary.</p>	No substantive change in size or location of balconies	<p><b>Unit 6.19, 6.18</b> No substantive change in size or location of balconies</p> <p><b>Unit 6.20 &amp; 6.16</b> Balcony's location and size updated. No Impact Elevation overlooks Longueville Road</p>
7.	No substantive change in size or location of balconies	<p><b>Unit 7.03</b> New terrace Required to meet ADG Private Open Space requirement. Setback 18m from south boundary behind substantial planter box.</p>	No Balconies	No Balconies

The applicant has provided the following comments in relation to visual and acoustic privacy and compliance with State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004:

**Table 3: Visual and Acoustic Privacy Comparison**

RELEVANT SEPP HSPD CLAUSES	APPROVED	PROPOSED MODIFICATION
<b>34 Visual and acoustic privacy</b>	<p>The assessment noted that:</p> <p><i>The proposal will provide appropriate setbacks to provide visual and acoustic privacy. This will be reinforced with building separation, careful placement of windows and the provision of screens as required. In addition, there will be extensive landscaping which will ensure a high level of privacy.</i></p>	<p>The proposed modifications maintain appropriate levels of and adjoining lands. The development appropriate as:</p> <ul style="list-style-type: none"> <li>The proposal does not provide any privacy concerns to the east and west elevation overlooks a bushland and the western elevation fronts Longueville Road</li> <li>The side setbacks to the building are provided with substantive setbacks interspersed with landscaping, and therefore provides privacy</li> <li>The proposed substantive landscaping the assist with providing obscured view lines</li> <li>The proposal complies with SEPP ADG requirements for building</li> <li>It reduces unit density and privacy impacts to adjacent Longueville Road because of the reduction in the number of units to the southern elevation from 29 to</li> <li>The privacy associated with the development is reasonable in the context of the permitted land use and the existing built forms on surrounding lands</li> </ul> <p>In addition, PWNA have written a Acoustic Report which demonstrates that the proposed construction can comply with the noise receiver requirements for traffic noise. In Consent stipulates</p> <p><i>104. A qualified acoustic consultant shall be engaged to certify that the design and construction of the traffic noise affected portions of the building EPA'S – Environmental criteria for road traffic noise. An acoustic report shall be submitted to Council Certificate</i></p>

**It is considered that the applicant has provided clarification of the changes to balconies and has demonstrated that no adverse privacy effects occur as a consequence of the changes.**

## 7. Substation and Through-Site Public Link

Panel Request 7: *Refinement of conditions relating to location of the substation and public access for the through site link*

Condition 62 of the original consent states:

*“The electricity kiosk shall be positioned in “substation location 2” marked on the diagram attached to the letter prepared by GSA Planning dated 8 June 2018, ie inside the Longueville Road boundary approximately half-way between the porte cochere entry and the public park, subject to the approval of the electrical utility provider.”*

The substation is now proposed to be located within the public park to be established at the northern end of the site. A report has been submitted by Edgewater Connection dated 26 May 2023, which details the requirements of the electricity provider.

In support of the changed location, the applicant submits that:

*“There are several site constraints impacting the substation location. The proposed location of the substation is the most suitable based on:*

- *24/7 direct unimpeded access from public road.*
- *Suitable clearance from building and essential services.*
- *No impact on existing trees.*
- *No impact on proposed residents for noise and electromagnetic fields*
- *No impact on access requirements for fire brigade*
- *No impact on building use due to construction segregation requirements such as fire and ventilation.”*

*“In the context of the technical requirements for the siting of substations, it should be noted that the location of the proposed substation to the northwest corner of the site will have no impact on public access to the children’s play area of the through site link and it will be installed in a landscape setting to minimize visual impact.*

The proposed amended condition has been altered in the attached draft conditions to clarify that the substation will be located within the public park.

Condition 155 of the original consent states:

155. *“Documents giving effect to the creation of a positive covenant allowing for public access to the publicly accessible walkway, pocket park, playground and the access park located on the northern boundary of the site registered on the title of the property. The wording of the terms of the positive covenant shall be in accordance with the wording provided by Lane Cove Council.*

155.1 *Access to the public pathway along the northern boundary of the site shall be closed between the hours of dusk and dawn. Lockable gates and signage shall be installed to the satisfaction of Council.”*

An additional condition under the heading “Operating Conditions” would clarify that in addition to creating the relevant covenant over the land, the pathway must be open/accessible to the public between dawn and dusk.

**It is considered that amending condition 62 and including an additional operating condition (No. 170) will provide suitable clarification and refinement of these aspects of the development.**



## 8. Conclusion

The proposal modification satisfies all relevant statutory requirements and represents a high quality design outcome. It is considered that the development as modified will have a positive impact in that it will increase the supply of high quality seniors housing, providing more housing choice and the option for local residents to remain in the area as they continue to age.

It is considered that the Panel's reasons for deferral on 17 May 2023 have been addressed by the applicant and the contents of this supplementary report. As detailed in this report, It is open to the Panel to approve the modification and the original recommendation for approval is now submitted with some minor alterations to proposed conditions.

**It is concluded that the proposed modification satisfies the required “substantially the same development” test and the development as modified will not result in adverse impacts when compared to the approved development.**

**Approval is therefore recommended.**

## 9. Recommendation

That:

- A.
1. The Panel is satisfied that the proposed modification:
    - is substantially the same development as the development for which consent was originally granted and before that consent was modified;
    - has been notified in accordance with the Lane Cove Community Participation Plan 2019; and
    - has been assessed having regard to the relevant matters in s4.15(1) EP&A Act.
  2. The Panel has considered all submissions made concerning the proposed modification within the period provided by Lane Cove Community Participation Plan 2019.
  3. The Panel has taken into account the reasons of the consent authority that granted the consent that is sought to be modified.
- B.
- Pursuant to the provisions of Section 4.55 of the Environmental Planning and Assessment Act, 1979, the Sydney North Planning Panel, as the relevant consent authority, approve the modification to Development Consent DA117/2017 for a seniors living development at 266 Longueville Road Lane Cove, subject to the updated conditions summarised below and detailed in full in attachment 7.
1. The description of the development is amended to read:  
*Construction of a seniors housing development comprising 92 independent living units/self-contained dwellings, with basement car parking, new public park and facilities and landscaped through site link.*
  2. Condition 1 is amended to reflect the following amended documentation:
    - *Access Report*
    - *Acoustic Report*
    - *Arborist Report*

- *Affordable Housing Policy*
- *Architectural Plans*
- *Basix Certificate*
- *BCA Report*
- *Fire Safety Schedule*
- *Bus Stop Relocation Letter*
- *Construction Traffic Management Plan*
- *Ecological Report*
- *Geotechnical Report*
- *Landscape Plans*
- *Operational Plan of Management*
- *Remedial Action Plan*
- *Stormwater Management Report*
- *Traffic Report*
- *Waste Report*

3. Delete conditions 2.1 and 2.2

*Note: These conditions relate to compliance with FSR, which is resolved in the modification*

4. Condition 3.1 is amended to reflect that Morrison Design Partnership Architect as the new Design Architect.
5. Condition 5 is amended to make reference to the updated Landscape Plan.
6. Condition 11.1 & 11.3 to be updated to ensure that developer contributions are amended to reflect the revised apartment numbers and mix.
7. Condition 62 is amended to reflect the location of the substation as shown in the architectural plans, or as otherwise directed by the electricity service provider.
8. Condition 149 is amended to reflect the recommendations contained in the updated Arborist Report.
9. Condition 154 is amended to require that 10 independent living units are to be made available as affordable housing in accordance with the Operator's affordable housing policy.
10. Condition 169 is added to ensure that on-site support services are provided to residents on an ongoing basis.
11. Condition 170 is added to ensure public access to the through-site link.



