

## COUNCIL ASSESSMENT REPORT - MODIFICATION APPLICATION

### SYDNEY NORTH PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSNH-429 - DAM/668/2018/A
<b>PROPOSAL</b>	S4.56 - Modifications to approved seniors living development including the addition of staging
<b>ADDRESS</b>	Lot 2A DP 158064 & Lot 1 DP 230172, Nos. 3 Quarry Road and 4 Vineys Road, Dural
<b>APPLICANT</b>	Leigh Buckton, Living Choice Australia
<b>OWNER</b>	Dural Gardens Land Pty Ltd
<b>MOD LODGEMENT DATE</b>	14 September 2023
<b>ORIGINAL DA DETERMINATION DATE</b>	14 May 2021 (LEC 2018/0022092)
<b>APPLICATION TYPE</b>	Modification Application under Section 4.56
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 2, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General Development over \$30 million and a Section 4.56 modification application
<b>CIV</b>	\$97,050,000 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	N/A
<b>KEY SEPP/LEP</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 (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> </ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	<p>Five unique submissions with the key issues being:</p> <ul style="list-style-type: none"> <li>Increased traffic for area</li> <li>Existing traffic problems in area</li> <li>Questions regarding the number of car parking spaces on site</li> </ul>

	<ul style="list-style-type: none"> <li>Concerns the rural community is being lost.</li> <li>Concerns regarding emergency services accessibility to the site</li> <li>Concerns regarding the amount of cut and fill.</li> <li>Concerns with the increase in height and building footprint; and</li> <li>Skepticism about revisions and additions to the court approved development.</li> </ul>
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<ul style="list-style-type: none"> <li>Statement of Environmental Effects - S4.56 SEE</li> <li>RFI Response (1) (Dec 2023)</li> <li>Applicant's response to RFI (2) (March 2024)</li> <li>Amended Architectural Plans (March 2024) <ul style="list-style-type: none"> <li>Amended Site Plan (June 2024)</li> <li>Amended Architectural Floor Plans (June 2024)</li> </ul> </li> <li>Amended Architectural Comparison Plans (March 2024)</li> <li>Staging Plan (March 2024)</li> <li>BASIX Certificate</li> <li>BASIX Assessor Certificate</li> <li>Civil Engineering Plans/Drawings</li> <li>Amended Civil Driveway Section 1 (Dec 2023)</li> <li>Civil Driveway Section 2 (Dec 2023)</li> <li>Civil Engineering Letter and Plans (March 2024)</li> <li>Amended Landscape Plans (June 2024)</li> <li>Traffic Statement</li> <li>Amended Traffic Swept Paths (Dec 2023)</li> <li>Supporting Bushfire Letter (March 2024)</li> <li>Amended Bushfire Response (April 24)</li> <li>Amended Waste Management Plan (Rev I)</li> <li>Amended Arborist Report (Dec 2023)</li> <li>Ecology Report</li> <li>Acoustic Engineer Statement</li> <li>Access Report</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)</b>	N/A
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	10 July 2024
<b>PLAN VERSION</b>	16 December 2022, Rev. A
<b>PREPARED BY</b>	Madeleine Bayman
<b>COI DECLARATION</b>	No conflict of interest declared
<b>DATE OF REPORT</b>	10 June 2024

## **EXECUTIVE SUMMARY**

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The modification application has been lodged pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and seeks consent for amendments to a consent granted under DA/668/2018 approved in the Land and Environment Court on 14 May 2021.

The application seeks approval for design modifications to an approved seniors living development, specifically modifications to some of the design elements of the approved Independent Living Unit's (ILU's) including associated landscape and civil works and the addition of staging to the consent outlined as follows:

- Stage 1: Demolition of any structures and required civil works including the addition of emergency access roads between Quarry Road and Vineys Road along the western boundary.
- Stage 2A: Construction of Buildings A, B, D and E and associated landscape works.
- Stage 2B: Construction of Buildings C, F and G and associated landscape works.
- Stage 3: Construction of Residential Aged Care Facility and associated landscape works.

The modification application seeks approval for a number of internal and external changes to the ILU's including to modify the basement footprints and layouts, arrangement of communal areas surrounding the ILU's and includes a number of external changes throughout the ILU buildings. The proposal also includes modifications to the access, loading areas, civil works and landscaping surrounding the ILU's. The changes are proposed to improve the efficiency, operation, constructability, economic feasibility and overall design of the development.

The proposed modification would not alter the approved RACF component of the development fronting Vineys Road.

The 29,892m<sup>2</sup> site comprises two irregularly shaped lots and has two frontages, located on the northern side of Quarry Road and southern side of Vineys Road, Dural. The site predominantly comprises of cleared land with low density structures and vegetation throughout. Traversing the site from east to west is a drainage swale which has been integrated into the approved development. The site is bushfire prone and is surrounded by rural/residential land in all directions, a nursery to the east and industrial/commercial precinct to the south-west.

The original development application No. DA/668/2018 was approved in the Land and Environment Court on 14 May 2021 (LEC 2018/0022092) for the demolition of existing structures, earthworks, tree and vegetation removal and construction of a seniors housing development comprising:

- Seven, two storey (with attics) Independent Living Unit (ILUs) buildings containing 91 self-care housing units.
- A two storey (with attic) Residential Aged Care Facility (RACF) with a capacity of 66 beds
- A central facilities building fronting Quarry Road; and
- A total of 225 car parking spaces.

No staging of the works was approved under the original consent.

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 has been repealed by State Environmental Planning Policy (Housing) 2021 (Housing SEPP). In most relevant aspects, the provisions are the same.

At the time of preparing this report, State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development (SEPP 65) has also been repealed by the Housing SEPP.

Notwithstanding, given the application was lodged prior to 14 December 2023, the saving provisions apply, and the proposal requires assessment against SEPP 65. The proposal complies with the design quality principles of SEPP 65 and 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.

A Site Compatibility Certificate was issued by the Department of Planning and Environment on 16 April 2020, pursuant to Clause 25(4) of SEPP HS&PD which deemed the application as permissible with consent on the site. The modified development is consistent with the provisions of this Site Compatibility Certificate which renders the proposed modified development as permissible with consent.

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 Council's Community Engagement Plan from 18 September 2023 to 9 October 2023. Five submissions from nearby property owners were received. The issues raised in the submissions primarily relate to traffic, the overall scale of the development and loss of rural character. The matters raised in the submissions have been reviewed and do not warrant refusal of the application. These issues are considered further in this report.

Whilst the original development was approved in the Land and Environment Court, the development was initially refused by the Sydney North Planning Panel and the trigger for planning panel determination was due to the Capital Investment Value of the development of more than \$30 million. Regional panels are also responsible for determining applications to modify a consent under Section 4.56 for regionally significant development.

A briefing was held with the Panel on 22 November 2023 where key issues were discussed, including changes to basement creating issues with waste, connecting basements over the existing watercourse and impacts on trees, loss of landscaping, amendments to emergency access arrangements and communal open space. These issues have been resolved as discussed in greater detail throughout this report.

Following consideration of the matters for consideration under Section 4.15(1) and 4.56 of the EP&A Act, it is considered that the proposed modification can be supported, subject to the conditions of consent contained at **Attachment A** of this report.



## 1 THE SITE AND LOCALITY

### 1.1 The Site

The site is known as 3 Quarry Road and 4 Vineys Road, Dural. The land has a legal description of Lot 2A in DP 158064 and Lot 1 DP 230172, and has a total site area of 29,898m<sup>2</sup>.

The site is irregular in shape, with a frontage to Quarry Road of 94m, and an 85m frontage to Vineys Road. A central, irregular area widens the site behind Lot 2 DP 230172 (fronting Vineys Road) and Lot 10 DP 870247 (fronting Quarry Road).

The site slopes down from Quarry Road and Vineys Road into a central, mapped watercourse which flows to Tunks Creek to the east.

The land is part of the Dural non-urban area which contains a mix of intensive agricultural land uses such as wholesale plant nurseries, market garden, and rural residential dwellings.

The northeastern corner of the site contains remnant vegetation which adjoins greater areas of vegetation through which the watercourse traverses.

The vegetation in the vicinity of the watercourse is mapped as being bushfire hazard.



Figure 1: Nearmap Aerial Photograph of the site (in red) as of 25 March 2024.

### 1.2 The Locality

The site is surrounded by rural and business zoned land, a nursery to the east and industrial/commercial precinct to the south-west. The site is located south-west of the North Q Business Centre which is zoned B2 Local Centre and comprises service and retail premises. The uses include rural supplies, fast food premises, cafés and retail stores. The land further south of the North Q Business Centre is zoned IN2 Light Industrial and R2 Low Density Residential.

To the east, 260m from the site, is the Pacific Hills Christian School. To the southwest is the business zone fronting Old Northern Road.

Vineys Road and Quarry Road are both no through roads. As a consequence, any traffic entering these roads from Old Northern Road must return to the area via Old Northern Road.

## **2 THE PROPOSAL AND BACKGROUND**

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### **2.1 The Proposed Modification**

The application proposes design modifications to an approved seniors living development, specifically modifications to some of the design elements of the approved Independent Living Unit's including associated landscape and civil works and the addition of staging to the consent.

The proposal seeks to amend conditions to enable the works to progress in a staged manner, outlined as follows:

- Stage 1: Demolition of any structures and required civil works including the addition of emergency access roads between Quarry Road and Vineys Road along the western boundary.
- Stage 2A: Construction of Buildings A, B, D and E and associated landscape works.
- Stage 2B: Construction of Buildings C, F and G and associated landscape works.
- Stage 3: Construction of Residential Aged Care Facility and associated landscape works.

In addition, the proposal seeks to change some of the design elements of the ILU's including associated landscape and civil works, summarised as follows:

- Modifications to the basement arrangement, parking and vehicular access within the site including paving of the approved turf track (to the south) to allow for emergency and heavy vehicle access only, in addition to the provision of a new vehicular access bridge, new basement under Building C and F and reduced basement area under Building G
- Reduction in overall car parking spaces from 225 to 219
- Modification to the arrangement and layout of the communal open spaces
- Alterations to the internal arrangement of the ILU's
- Internal modification to the building entry and communal area, including revised floor level, removal of cinema room (relocated within basement) and main kitchen (relocated within basement) and provision of a new music room, library, reception and games room.
- Changes to the roof form and design, including increase in height due to lift overrun. Roof forms do not exceed 10.5m height limit.
- The addition of a porte cochere at the front of the site
- A number of relatively minor internal and external changes
- Modified civil works including the addition of a 4th vehicular crossing off Quarry Road for improved emergency access arrangements; and
- Modified landscaping to reflect changes.

The number of ILU's would remain unchanged.

The proposed modification would not alter the approved RACF component of the development fronting Vineys Road.

A summary of the key numerical data between the approved and proposed modified development is provided in **Table 1** below.

**Table 1: Development Data**

Control	Approved	Proposed
<b>Site area</b>	29,695m <sup>2</sup>	
<b><u>GFA and FSR</u></b>		
ILU's	GFA - 14,148m <sup>2</sup> FSR - 0.48:1	GFA - 13,268m <sup>2</sup> FSR - 0.44:1
RACF	GFA - 3,750m <sup>2</sup> FSR - 0.13:1	GFA - 3,750m <sup>2</sup> FSR - 0.13:1
Excess Parking	GFA - 1,163m <sup>2</sup> FSR - 0.04:1	GFA - 650m <sup>2</sup> FSR - 0.02:1
<b>Total</b>	<b>GFA - 19,061m<sup>2</sup> FSR - 0.65:1</b>	<b>GFA - 17,668m<sup>2</sup> FSR - 0.59:1</b>
<b>No. of ILU's</b>	91 (43 x 2 bedroom and 48 x 3 bedroom)	91 (43 x 2 bedroom and 48 x 3 bedroom)
<b>RACF No. of Rooms</b>	66 rooms	66 rooms
<b>Height of ILU's</b>		
Building A	10.5m to roof form	11.8m to lift overrun
Building B	10.5m to roof form	12m to lift overrun
Building C	10.5m to roof form	11.55m to lift overrun
Building D	10.1m to roof form	12.05m to lift overrun
Building E	9.77m to roof form	11.4m to lift overrun
Building F	8.55m to roof form	11.4m to lift overrun
Building G	9.5m to roof form	10.7m to lift overrun
		Note: All modified roof forms do not exceed 10.5m height limit. Variation from lift overruns only.
<b>Height of RACF</b>	7.4m	7.4m
<b>Landscaped Area</b>	12,455.47m <sup>2</sup> or 42% (excl. emergency access)	11,769m <sup>2</sup> or 39% (excl. emergency access)
<b>Car Parking Spaces for ILU's</b>	177 (153x resident, 18x visitor, 6x staff)	171 (134x resident, 31x visitor, 6x staff)
<b>Car Parking Spaces for RACF</b>	48 (33x resident/visitor, 15x staff)	48 (33x resident/visitor, 15x staff)

A summary of the proposed changes to conditions is outlined in **Table 2** below.

**Table 2: Proposed Changes to Conditions**

Condition No.	Condition requirements	Change Proposed	Reason for Change
<b>CONDITIONS THAT APPLY TO ALL STAGES</b>			
<b>3</b>	Approved plans and documents	Modify architectural, landscape and civil plans / Update relevant documents	Modify to update plans and documents to reflect modifications to development

<b>4</b>	Amendment of Plans	Modify elements of condition that no longer apply to modification or have been reflected in amended plans/ documents. Include additional requirement for approved landscape plans (4iii)c) and signage/ bollard requirements for emergency only accessways (4vii)).	Modify to reflect amendments to development
<b>7A</b>	Tree Pruning	Added to include tree pruning works required for tree number T10	To reflect pruning works required to tree number T10 as identified in amended AIA
<b>8A</b>	Compliance with Other Department, Authority or Service Requirements	Reference updated NSW GTA's and original NRAR GTA's - replace conditions numbered 103 to 106 (inclusive)	To simplify consent and reference relevant documents rather than copy and pasting conditions
<b>15</b>	Internal Driveway/ Vehicular Areas	Delete condition 15g) as this matter is adequately dealt with in condition 19b) – agreed to by Council's engineer	Requested amendment for consistency with the relevant Australian Standards
<b>18</b>	On Site Stormwater Detention and Water Quality Treatment System	Modify condition 18a) to refer to the predeveloped site rather than undeveloped site to match current design specifications – agreed to by Council's engineer	Requested amendment to reflect current design specifications
<b>21</b>	Electrical Kiosks and Fire Booster	Added requirement under b) to ensure electrical kiosk and fire booster to not restrict sight distance from vehicles entering or exiting the site to pedestrians and cyclists travelling along footpaths	To ensure electrical kiosk and fire booster to not restrict sight distance from vehicles entering or exiting the site to pedestrians and cyclists travelling along footpaths



<b>23</b>	Waste Management Details (Prior to the Issue of a CC)	Modify condition for waste management details that apply to all stages - separate conditions applied specific to stages 1, 2A, 2B and 3	To reflect amendments in terms of waste management and proposed staging of development.
<b>24</b>	Certification of Traffic Engineer	Modified to include wording "applicable to the stage"	To reflect proposed staging of development.
<b>25</b>	Construction Management Plan (CMP)	Modified to include option of being combined for all stages or prior to each stage	To reflect proposed staging of development.
<b>27</b> <b>28</b> <b>29</b> <b>29A</b> <b>58</b> <b>68</b> <b>71</b> <b>73</b>  <b>74</b> <b>75</b> <b>78</b>  <b>79</b>  <b>80</b> <b>81</b> <b>82</b> <b>83</b>  <b>84</b>  <b>90</b> <b>91</b>  <b>92</b> <b>95</b>  <b>96</b>	Noise - Mechanical Plant Assessment Mechanical Plant Mechanical Ventilation Fire Sprinklers Survey Report - FFL Consolidation Certificate of WSUD Facilities Works as Executed Plan  Creation of Easements Completion of Landscaping Restriction on Occupation - Housing for Seniors or People with a Disability, Occupation Certificate Requirement, External Lighting Safety and Security Grease Trap Installation Kitchen Exhaust Installation Garbage Collection Easement Food Premises Works within Road Reserve Fire Sprinklers Resident Services for Self-Contained Dwellings	Deleted and re-instated to relevant stages of development - conditions numbered 107 onwards	To reflect proposed staging of development.

<b>97</b> <b>100</b>	Dedicated Bus Service for Self- Contained Dwellings At call Minibus to operate on site Fire Safety Statement - Annual		
<b>59 (h and i)</b>	Waste Management Details (During Demolition and Construction)	Added to condition for waste management details that apply to amended development	To reflect amendments in terms of waste management
<b>76</b>	Retaining Walls	Modified to ensure all required retaining walls are constructed prior to the issue of an OC under any stage of the development	To reflect proposed staging of development
<b>85 (d, e, f, g, h, i, j, k, l, m)</b>	Waste Management Details (Prior to the Issue of an OC)	Modify condition for waste management details that apply to all stages. Deleted relevant elements of conditions that apply to various stages of development - re-instated in conditions numbered 107 onwards	To reflect proposed staging of development and modified waste management requirements
<b>102 (a, b, c, d, f, g)</b>	Waste Management (Operational)	Modify condition for waste management details that apply to all stages. Deleted relevant elements of condition that apply to various stages of development - re-instated in conditions numbered 107 onwards	To reflect proposed staging of development and modified waste management requirements
<b>103, 104, 105, 106</b>	General Terms of Approval - NSW RFS and NRAR	Deleted and referenced in added condition number 8A	
<b>CONDITIONS THAT APPLY TO STAGE 1 ONLY</b>			
<b>107</b>	Waste Management Details (Prior to Issue of CC)	Added to reflect waste management requirements for Stage 1 of development	To reflect proposed staging of development and modified waste management requirements

<b>108</b>	Survey Report	Added to reflect survey report requirements under Stage 1 of development	To reflect proposed staging of development
<b>109</b>	Waste Management Details (Prior to Issue of OC)	Added to reflect waste management requirements for Stage 1 of development	To reflect proposed staging of development and modified waste management requirements
<b>110</b>	Work as Executed Plan	Added to reflect civil works associated with Stage 1 of development	To reflect proposed staging of development
<b>111</b>	Works within the Road Reserve	Added to reflect works required within road reserve under Stage 1 of development	To reflect proposed staging of development
<b>CONDITIONS THAT APPLY TO STAGES 2A AND 2B ONLY</b>			
<b>112</b>	Waste Management Details (Prior to Issue of CC)	Added to reflect waste management requirements for Stages 2A and 2B of development	To reflect proposed staging of development and modified waste management requirements
<b>113</b>	Noise - Mechanical Plant Assessment	Added to reflect mechanical plant noise requirements for Stages 2A and 2B of development	To reflect proposed staging of development
<b>114</b>	Mechanical Plant	Added to ensure adequate noise measures are in place and ventilation requirements are applied in Stages 2A and 2B of development	To reflect proposed staging of development
<b>115</b>	Mechanical Ventilation	Added to ensure adequate ventilation requirements are applied for ILU's in Stages 2A and 2B of development	To reflect proposed staging of development
<b>116</b>	Survey Report	Added to reflect survey report requirements	To reflect proposed staging of development

		under Stages 2A and 2B of development	
<b>117</b>	Garbage Collection Easement	Added to ensure garbage collection easement is in place prior to the issue of an OC for Stages 2A and 2B of development	To reflect proposed staging of development
<b>118</b>	Waste Management Details (Prior to Issue of OC)	Added to reflect waste management requirements for Stages 2A and 2B of development	To reflect proposed staging of development and modified waste management requirements
<b>119</b>	Consolidation	Added to ensure the lots are consolidated prior to the issue of an OC for Stages 2A and 2B of development	To reflect proposed staging of development
<b>120</b>	Certificate of WSUD Facilities	Added to ensure WSUD facilities have been adequately constructed and meet the water quality targets prior to the issue of an OC for Stages 2A and 2B of development	To reflect proposed staging of development
<b>121</b>	Creation of Easements	Added to ensure relevant easements, restrictions and covenants are adequately in place prior to the issue of an OC for Stages 2A and 2B of development	To reflect proposed staging of development
<b>122</b>	Completion of Landscaping	Added to ensure landscaping works have been adequately completed prior to the issue of an OC for Stages 2A and 2B of development	To reflect proposed staging of development
<b>123</b>	Restriction on Occupation - Housing for Seniors or People with a Disability	Added to ensure Senior Living restrictions are in place for the	To reflect proposed staging of development

		accommodation prior to the issue of an OC for Stages 2A and 2B of development	
<b>124</b>	External Lighting	Added to ensure external lighting complies with the relevant standards for Stages 2A and 2B of development	To reflect proposed staging of development
<b>125</b>	Safety and Security	Added to ensure adequate safety and security are in place for Stages 2A and 2B of development	To reflect proposed staging of development
<b>126</b>	Grease Trap Installation	Added to ensure grease traps is installed within commercial kitchens where required for Stages 2A and 2B of development	To reflect proposed staging of development
<b>127</b>	Kitchen Exhaust Installation	Added to ensure adequate exhaust system is installed within commercial kitchens where required for Stages 2A and 2B of development	To reflect proposed staging of development
<b>128</b>	Food Premises	Added to ensure adequate food premises fit and operations are used for the manufacture, preparation or storage of food for sale under Stages 2A and 2B of development	To reflect proposed staging of development
<b>129</b>	Fire Sprinklers	Added to ensure fire sprinklers are in place prior to the issue of an OC for Stages 2A and 2B of development	To reflect proposed staging of development
<b>130</b>	Resident Services for Self-Contained Dwellings	Added to ensure adequate ongoing	To reflect proposed staging of development

		resident services remain in place for Stages 2A and 2B of development	
<b>131</b>	Dedicated Bus Service for Self-Contained Dwellings	Added/modified to ensure ongoing bus services for residents and to ensure the bus does not park in waste collection vehicle paths for Stages 2A and 2B of development	To reflect proposed staging of development and ensure waste collection services are not compromised.
<b>132</b>	At-call Minibus to operate on site	Added/modified to ensure ongoing mini-bus or golf buggy service is in place on site for residents under Stages 2A and 2B of development	To reflect proposed staging of development and ensure waste collection services are not compromised.
<b>133</b>	Fire Safety Statement - Annual	Added to ensure Fire Safety Certificates are obtained annually and in perpetuity for Stages 2A and 2B of development	To reflect proposed staging of development
<b>134</b>	Waste Management Details (Ongoing)	Added to reflect ongoing waste procedures for Stages 2A and 2B of development	To reflect proposed staging of development and modified waste management procedures
<b>CONDITIONS THAT APPLY TO STAGE 3 ONLY</b>			
<b>135</b>	Waste Management Details (Prior to Issue of CC)	Added to reflect waste management requirements for Stage 3 of development	To reflect proposed staging of development and modified waste management requirements
<b>136</b>	Noise - Mechanical Plant Assessment	Added to reflect mechanical plant noise requirements for Stage 3 of development	To reflect proposed staging of development
<b>137</b>	Mechanical Plant	Added to ensure adequate noise measures are in place and ventilation requirements are applied in Stage 3 of development	To reflect proposed staging of development



<b>138</b>	Survey Report	Added to reflect survey report requirements under Stage 3 of development	To reflect proposed staging of development
<b>139</b>	Fire Sprinklers	Added to ensure details for fire sprinklers are provide prior to the issue of a CC for Stage 3 of development	To reflect proposed staging of development
<b>140</b>	Garbage Collection Easement	Added to ensure garbage collection easement is in place prior to the issue of an OC for Stage 3 of development	To reflect proposed staging of development
<b>141</b>	Waste Management Details (Prior to Issue of OC)	Added to reflect waste management requirements for Stage 3 of development	To reflect proposed staging of development and modified waste management requirements
<b>142</b>	Certificate of WSUD Facilities	Added to ensure WSUD facilities have been adequately constructed and meet the water quality targets prior to the issue of an OC for Stage 3 of development	To reflect proposed staging of development
<b>143</b>	Completion of Landscaping	Added to ensure landscaping works have been adequately completed prior to the issue of an OC for Stage 3 of development	To reflect proposed staging of development
<b>144</b>	Restriction on Occupation - Housing for Seniors or People with a Disability	Added to ensure Seniors Living restrictions are in place for the accommodation prior to the issue of an OC for Stage 3 of development	To reflect proposed staging of development
<b>145</b>	Occupation Certificate Requirement	Added to ensure the RACF is registered as a retirement village prior to	To reflect proposed staging of development

		the issue of an OC for Stage 3 of development	
<b>146</b>	External Lighting	Added to ensure external lighting complies with the relevant standards for Stage 3 of development	To reflect proposed staging of development
<b>147</b>	Safety and Security	Added to ensure adequate safety and security are in place for Stage 3 of development	To reflect proposed staging of development
<b>148</b>	Grease Trap Installation	Added to ensure grease traps is installed within commercial kitchens where required for Stage 3 of development	To reflect proposed staging of development
<b>149</b>	Kitchen Exhaust Installation	Added to ensure adequate exhaust system is installed within commercial kitchens where required for Stage 3 of development	To reflect proposed staging of development
<b>150</b>	Food Premises	Added to ensure adequate food premises fit and operations are used for the manufacture, preparation or storage of food for sale under Stage 3 of development	To reflect proposed staging of development
<b>151</b>	Fire Sprinklers	Added to ensure fire sprinklers are in place prior to the issue of an OC for Stage 3 of development	To reflect proposed staging of development
<b>152</b>	Fire Safety Statement - Annual	Added to ensure Fire Safety Certificates are obtained annually and in perpetuity for Stage 3 of development	To reflect proposed staging of development
<b>153</b>	Waste Management Details (Ongoing)	Added to reflect ongoing waste procedures for Stage 3 of development	To reflect proposed staging of development and modified waste management procedures

## 2.2 Background

The site was previously used for silviculture and contains a dwelling and outbuildings to the Vineys Road frontage. The plantation has recently been removed, leaving the site substantially cleared.

On 18 July 2018, DA/668/2018 was lodged for a Seniors living development comprising 146 independent living units and 74 residential aged care beds.

On 5 December 2018, the Sydney North Planning Panel refused DA/668/2018 (SNPP No. 2018SNH043) for the following reasons:

*The application does not comply with the maximum height in the Hornsby LEP 2013 of 10.5m. The applicant has lodged a written request under cl 4.6 of the LEP to vary the control. The Panel accepts the assessment report's conclusion that the cl4.6 variation has not satisfactorily demonstrated that:*

- the 10.5m height of buildings development standard is unreasonable or unnecessary in the circumstances of the case;*
- there are sufficient environmental planning grounds to justify contravening the development standard; or that*
- the development would be in the public interest as it would not be consistent with the zone or standard objectives, and thus would not be in the public interest.*

*Clause 24(2) of the SEPP(HSPD) requires a development under the Policy to be compatible with the surrounding environment. Clause 24(3)(a)(ii) enables a council to refuse an application based on its own assessment of the compatibility of the proposal with the surrounding environment. Notwithstanding the Site Compatibility Certificate issued for this site, the Panel accepts the assessment report's conclusion that the proposed development is not compatible with its surroundings. The Panel accepts that seniors' housing on this site may be designed to be compatible with the surroundings; however, this particular built form is not compatible. While the site partially adjoins urban land which has urban character, its major visual connection is to land possessing rural character. The Panel also accepts that a seniors' housing development cannot have the exact appearance of rural residential development. However, the design of this particular proposal does not appear to have made any compromise to the fact that, in the main, it is surrounded by rural character.*

*Clause 17 of SEPP(HSPD) requires that development on land adjoining land zoned for urban purposes is to be serviced self-care housing, where meals, cleaning services, personal care and nursing care are available on site. The applicant has not provided suitable evidence that all these services will be provided.*

*Clause 28 of the SEPP(HSPD) states that a consent authority must not consent to a development unless it is satisfied by written evidence that the development will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage. There has not been sufficient such evidence.*

*As the application is integrated development, the Panel cannot grant consent without the written concurrence of the NSW Rural Fire Service. The Service has not issued this concurrence.*

*The Panel noted the applicant's request, made during the public meeting, that the Panel should defer the determination application. The applicant indicated that it intends to submit amended plans to the court, which would reduce the gross floor space by about one third and would reduce the height so as to comply with the control of 10.5m and further address the threshold issues of permissibility. The Panel's usual practice is to defer applications only when it can require specific*

*nominated amendments which have a good chance to make an application acceptable. In this case, no specific amendments can be indicated due to the extent of amendments required and it is possible that an amended application is so different from the current one before the Panel that it should be treated as a new application.*

*Accordingly, the Panel unanimously resolved to refuse the application before it for the reasons in the Assessment Report.*

On 14 May 2021, the Land and Environment Court (LEC 2018/0022092) upheld the appeal and granted consent to DA/668/2018 for the demolition of existing structures, earthworks, tree and vegetation removal and construction of a seniors housing development comprising:

- Seven, two storey (with attics) Independent Living Unit (ILUs) buildings containing 91 self-care housing units.
- A two storey (with attic) Residential Aged Care Facility (RACF) with a capacity of 66 beds
- A central facilities building fronting Quarry Road; and
- A total of 225 car parking spaces.

No staging was approved under the original consent. The gross floor area was significantly reduced, as was the height of all buildings to comply with the 10.5 metre height limit for the area.

The modification application was lodged on 14 September 2023. A chronology of the modification application since lodgement is outlined below in **Table 3** including the Panel's involvement (briefings, referrals etc) with the application:

**Table 1: Chronology of the Modification Application**

Date	Event
14 September 2023	Modification application lodged.
18 September 2023 to 9 October 2023	Exhibition of the application.
18 September 2023	Modification referred to Council's waste, traffic, trees, biodiversity and engineering teams for review.
22 September 2023	Waste comments received, requesting further information.
28 September 2023	Traffic comments received, with no concerns raised – conditions to be applied as per original consent.
24 October 2023	Biodiversity comments received, with no concerns raised – conditions to be applied as per original consent.
25 October 2023	Comparison plans requested of approved vs. modified plans.
27 October 2023	Tree comment received, requesting further information.
20 November 2023	Engineering comments received, requesting further information.
22 November 2023	Sydney North Planning Panel (SNPP) preliminary briefing.
29 November 2023	RFI letter from Council requesting the following information: <ul style="list-style-type: none"> <li>• Additional waste management details.</li> <li>• Assessment of T10 with updated AIA and TPP.</li> </ul>

	<ul style="list-style-type: none"> <li>• Additional engineering details for driveway 5 which provides access to the basement garage of building G and crosses over the watercourse.</li> <li>• Further landscape details/plans – increase in soft landscaping requirement and removal of vehicular crossing off Quarry Road.</li> <li>• Comparison plans.</li> <li>• Basement plans including boundary setbacks/relationship.</li> <li>• Further assessment under section 4.56 of the EP&amp;A Act considering the reasons given by the consent authority for the grant of the consent that is sought to be modified.</li> <li>• Draft set of conditions for staging development</li> <li>• Cover letter detailing how RFI has been responded to.</li> </ul>
21 December 2023	<p>Amended plans/documents submitted with response/additional information to address the RFI dated 29/11/23. The draft set of conditions were still outstanding at this time.</p> <p>The application was subsequently re-referred to waste, tree and engineering team for review.</p>
15 January 2024	Waste comments received, again requesting further information.
20 February 2024	<p>2nd RFI letter from Council requesting the following information:</p> <ul style="list-style-type: none"> <li>• Additional waste management details.</li> <li>• Further information with regards to the addition of a fourth vehicular crossing off Quarry Road.</li> <li>• Additional information from bushfire consultant with regards to whether the full extent of the perimeter roads was required and could not be reduced with an alternate solution under Planning for Bushfire Protection 2019; and</li> <li>• Outstanding draft set of conditions.</li> </ul> <p>This RFI letter also noted that Council's tree officer would be able to assess the application without an updated TPP as previously requested and suitable conditions could be applied.</p>
27 February 2024	Tree comments received, with no further concerns raised – conditions to be applied as per original consent with addition of tree pruning condition for tree number T10.
11 March 2024	<p>Amended plans/documents submitted with response/additional information to address the RFI dated 20/02/24.</p> <p>The applicant also requested a slight change to staging to include 4 stages (Stages 1, 2A, 2B and 3) instead of the previously proposed 2 stages. An updated staging plan was also submitted.</p>
19 March 2024	Engineering comments received, with no further concerns raised – conditions to be applied as per original consent.
20 March 2024	Waste comments received, with no further concerns raised and several conditions to be amended to reflect changes/staging to development.

9 April 2024	Integrated referral sent to NSW RFS. Upon receipt of additional information, it was considered that NSW RFS GTA's of original court approved consent required review - conditions inconsistent with approved and proposed plan, specifically with regards to access roads.
23 April 2024	Updated NSW RFS GTA's provided.
22 May 2024	SNPP determination meeting scheduled for 10 July 2024.
3 June 2024	Inconsistency between proposed architectural and landscape plans identified – requested amendment from Applicant.
12 June 2024	Updated architectural and landscape plans submitted.

### 3 STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in Section 4.56 of the 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 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

#### 3.1 Section 4.56 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.56 of the EP&A Act. The matters include the following:

- (1)(a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) (s4.56(1)(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 14 May 2021 and the documents referred to in the consent including the Statement of Environmental Effects 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 2 below).

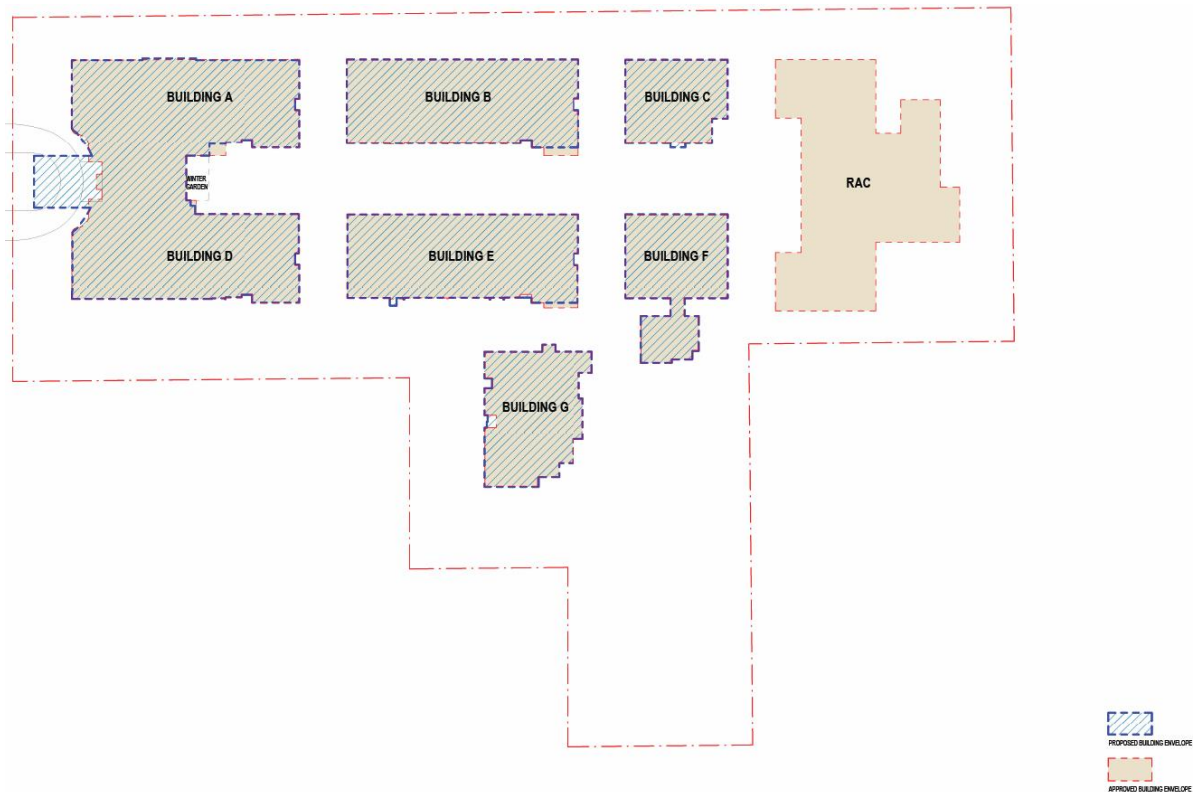


Figure 2: Site Plan with proposed envelope building envelope overlay (blue) and original approved (red) building envelope, prepared by AUDAA.

The applicant provided a list of reasons demonstrating that the development as modified is substantially the same development as that originally approved. These are summarised 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 the same with a change to dwelling mix to suit expressed seniors requirements;*
- *The changes to the roof forms, porte cochere and lift overruns will have no adverse impact to the character of the development originally approved;*
- *The relationship to neighbouring/adjoining properties remains consistent to that approved, with respect to building scale and setbacks;*
- *The building footprint and site layout is predominantly maintained and makes no significant changes to the streetscape or relationship to neighbouring properties.*

- *The minor increase in height, roof form and parking arrangements would have no adverse impact to the surrounding locality.*
- *The modified proposal results in an overall reduction in GFA and FSR from 0.65:1 to 0.59:1.*
- *Landscaping remains generally the same, including importantly, the retention the significant Sydney Turpentine-Ironbark Forest and Blackbutt Gully Forest within the western portion of the site.*

In summary, 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 66 beds and eight Independent Living Unit buildings, comprising a total of 91 units. The general external design and architecture of the buildings has not significantly altered from the approved design. Architectural design features including facade elements are maintained and the facade material palette is consistent with the approved design.

The increase in height of the ILU buildings as a result of lift overruns and change in roof form would not result in any significant visual or physical impact to the bulk and scale for the development will retain the built form as originally approved. 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.

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

- (i) the regulations, if the regulations so require, and*
- (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 (s4.56(1)(b)), and*

The original development application was integrated development requiring General Terms of Approval from the NSW Rural Fire Service (RFS) and the Natural Resources Access Regulator (NRAR) NSW. The modified proposal was re-referred to NSW RFS to review the modified changes and request for review of GTA's due to an error in the original approval. The modified proposal was not required to be re-referred to NRAR. 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 traffic generation for the development and would not increase the number of units on the site.

*(1)(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person (s4.56(1)(c)), and*

The modified proposal was publicly exhibited and five submissions from nearby property owners were received.

*(1)(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be (s4.56(1)(d)).*

The modification application was notified between 18 September 2023 and 9 October 2023 and five submissions were received. The issues raised in these submissions are considered in Section 4 of this report.

- (1A) *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 (s4.56(1A)).*

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

In accordance with the above, DA/688/2018 was approved on 14 May 2021 by the Land and Environmental Court (LEC) for the demolition of existing structures and the construction of a 66 bed residential care facility and 91 dwelling seniors living development, and associated works. The LEC judgement considered the following reasons for the granting of consent:

- Fulfilment of the Site Compatibility Certificate: The proposed modifications have no effect on fulfilment of the Site Compatibility Certificate as the proposal is substantially the same as that originally approved and will not result in any considerable changes in design, arrangement or operation.
- Development on land adjoining land zoned primarily for urban purposes: The proposal will not alter the use and operation of the development as originally approved and will maintain the provision of Independent Living Units and a Residential Aged Care Facility, and the relevant conditions of consent imposed will not be altered.
- Jurisdictional issues: The various issues raised as they pertain to the SEPP (Housing for Seniors or People with a Disability) 2004 were resolved and these matters, including occupation and use, services and facilities, bushfire and the like have not been significantly altered as part of this application, and will be consistent with that originally approved.
- Character and design: The proposed modifications will not result in any significant changes to the architectural design of the approved development and will present to the streetscapes and neighbouring properties as originally approved, and as such, is consistent with the original consent. That is, the architectural character of the development, including landscaping, will be maintained as originally approved.
- Amenity of surrounding developments: In terms of privacy, solar access and views, the proposed modifications will not result in any wholesale changes to the bulk, scale or design of the development. Accordingly, and as addressed in the original SEE, the conclusions made in the original consent have not been altered.
- Conditions of consent: Whilst the proposal will seek to stage the development, it will not seek to remove any conditions which were deemed necessary by the Court.
- In accordance with the above, the proposed modifications will not alter the reasons given by the Court in granting consent for the approved development. The proposed changes, as identified in the SEE, will not result in any significant or wholesale changes which require reconsideration of the reasons for approval. As such, it is considered that Clause 4.56(1A) has been satisfied.

In summary, it is considered that 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 EP&A Act**

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 4.56(1A), 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,*
- (b) the *likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the *suitability of the site for the development,*
- (d) any *submissions made in accordance with this Act or the regulations,*
- (e) 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.

#### **3.4 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 2: Summary of Applicable State Environmental Planning Policies (Preconditions in bold)**

EPI	Matters for Consideration	Comply
<b>SEPP (Biodiversity &amp; Conservation)</b>	<b>Chapter 6: Waterways - Hawkesbury-Nepean River</b>	Y
<b>BASIX SEPP</b>	BASIX Certificate supplied for a total of 91 ILU's. 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 ADG requirements.</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 2.122</b> - The development was not required to be referred to TfNSW as the modified proposal would not increase traffic generation and the modification would not increase the number of units on the site.</li> </ul>	Y
<b>LEP</b>	<b>Relevant Clauses</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</li> <li><b>Clause 6.2</b> - Earthworks</li> <li><b>Clause 6.8</b> - Design Excellence</li> </ul>	Y N Y Y

#### **3.4.1 State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The application has been assessed against the requirements of chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

### **3.4.1.1 Chapter 6 Waterways**

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. This chapter 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.

The plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; interrelationship of waterway and foreshore uses; foreshore and waterways scenic quality; maintenance, protection and enhancement of views and boat storage facilities.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the modified proposal would not impact on the water quality of the catchment and would comply with the requirements of chapter 6 of the Biodiversity and Conservation SEPP.

### **3.4.2 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 modified application is accompanied by BASIX Certificate No.1395688M and NatHERS Assessor Certificate No. 0008715200 prepared by Building Sustainability Assessments dated 16 June 2023 committing to environmentally sustainable measures. The Certificates demonstrate the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The modified proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

### **3.4.3 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 retain the number of ILU's being for 91 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 Development Standards – general

With regards to Clause 84(2)(a) and (b), the site area and frontage width are more than the minimum requirements. Clause 84(2)(c), (3) and (4) do not apply to this development as it is located in a rural zone.

The approved development provides for 7 storey buildings (A, B, C, D, E, F & G), with Building A and D along the Quarry Road frontage. The roof ridge height of the building's steps down from south to north to reflect the natural topography of the land.

The application proposes to increase the height of all ILU buildings to cater for the lift overruns. The general building form and height would remain substantially the same. The lift overruns and porte cohere services enclosures are adequately screened from the public domain. The lift overruns are also located centrally within the building envelopes, integrated into the overall design. These services do not exceed 20% of the surface area of the roof.

Existing trees and vegetation along Quarry Road would soften the appearance of the buildings from within the streetscape and it is considered that the proposal would create variety in the built form with an appropriate bulk and scale.

In the absence of any applicable development standards for height under the Housing SEPP, the assessment of the building height is merit based and discussed further in section 3.4.8.2 of this report.

#### Clause 85 Development standards for ILU's

This clause requires developments to comply with development standards contained within Schedule 4 of the Housing SEPP to ensure an adequate level of access for people with disabilities. The application includes an Access Report that addresses the controls. Compliance with the controls is considered in **Table 5** below and reinforced by conditions of consent.

**Table 5: Consideration of Development Standards in Schedule 4 of Housing SEPP**

Clause	Control	Comply	Comments
2	Siting Standards		
	Wheelchair access 100% of the units must have wheelchair access by a continuous path of travel to an adjoining public road and to common areas.	Y	Levels are designed to provide a continuous accessible path from the units to the internal driveway and public road. The access report certifies that all gradients are suitable for wheelchair access.
	Site gradient should be less than 1:10	Y	Modified site gradient would be less than 1:10.
	Common areas in accordance with AS 1428.1.	Y	Wheelchair accessibility provided to all common areas.
3	Letterboxes	Y	To be provided at the accessible entry pathway to the main building.

4	<p>Car Parking</p> <p>If car parking (not being car parking for employees) is provided:</p> <p>Car spaces must comply with AS2890, and 5% of total number must be designed to enable width to be increased to 3.8 metres.</p> <p>Any garage with power operated doors</p>	<p>Y</p> <p>N/A</p>	<p>Required car parking spaces comply.</p> <p>No garages identified</p>
5	<p>Accessible entry</p> <p>Every entry must comply with AS4299.</p>	Y	The access report advises that the units comply. Compliance is ensured via conditions of consent.
6	<p>Interior: general</p> <p>Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.</p>	Y	The access report advises that the units comply with AS1428.1. Compliance is ensured via conditions of consent.
7	<p>Bedroom</p> <p>One bedroom to accommodate a wardrobe and queen-size bed and a clear area of at least 1200mm at the foot of the bed and 1000mm wide beside the bed and the wall.</p>	Y	The access report advises that the units comply with this requirement. Compliance is ensured via conditions of consent.
8	<p>Bathroom</p> <p>At least 1 bathroom to comply with AS1428.1</p>	Y	The access report advises that the units comply with AS1428.1. Compliance is ensured via condition of consent.
9	<p>Toilet</p> <p>Provide a visitable toilet per AS4299.</p>	Y	The access report advises that the units comply with this provision. Compliance is ensured via conditions of consent.
10/ 11/ 12	<p>Surface finishes/ Door hardware/ Ancillary items</p> <p>.</p>	Y	Compliance via conditions of consent recommended and as per access report advice.
13	Private Passenger Lifts	N/A	Do not apply to development
15	Bedroom	Y	At least one bedroom within the ILU's is on the same floor as the entry to the unit. Compliance is ensured via conditions of consent.
16	<p>Living room</p> <p>Circulation space per AS4299.</p>	Y	A living room is provided on the same floor as the entry to the dwelling and complies with the circulation space requirements. Compliance is ensured via conditions of consent.
17	Main are of private open space	Y	The main area of private open space is provided on the same floor as the

			entry to the dwelling. Compliance is ensured via conditions of consent.
18	Kitchen Circulation space per Cl.4.5.2 of AS4299. Width of door approaches of 1200mm.	Y	The kitchen is provided on the same floor as the entry to the dwelling. Compliance is ensured via conditions of consent to ensure compliance with AS4299.
19	Laundry Compliance with AS 1428.1.	Y	The laundry is provided on the same floor as the entry to the dwelling. Compliance is ensured via conditions of consent.
20	Storage for Linen	Y	Linen cupboards provided. Compliance is ensured via conditions of consent.
21	Lift access in multi-storey buildings	Y	The access report advises that lift is provided and complies with the relevant requirements.
22	Garbage A garbage storage area must be provided in an accessible location.	Y	An accessible path of travel is provided to the garbage storage rooms. Compliance is ensured via conditions of consent.

As indicated in the above table, the proposal complies with the development standards contained within Schedule 4 of the Housing SEPP.

#### 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. 93 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

Conditions No. 29A and 92 were applied to the original consent requiring an adequate fire sprinkler system for the development. These conditions have been deleted and re-instated under relevant stages numbered 2A, 2B and 3 (condition numbers 129, 139, 151) of consent for this modification application.

#### 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 maintain 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

The site is bushfire prone, and the original development application was referred to NSW Rural Fire Service (RFS) as integrated development requiring General Terms of Approval (GTA's). These GTA's formed part of the original consent. The modified proposal was re-referred to NSW RFS to review the modified changes and request for review of GTA's due to an error in the original approval. Updated

GTA's were provided by the RFS with the error rectified and no further conditional requirements. These GTA's form part of the modified consent.

#### Clause 97 - Design of seniors housing

Clause 97(1) does not apply to this development given the application was lodged prior to December 2023. Clause 97(2) outlines the design principles for seniors housing which is set out in Schedule 8 of the Housing SEPP and discussed below.

##### 1. Neighbourhood Amenity and Streetscape

The subject site is approved for senior's housing and is considered compatible with the built form of development within the visual catchment. The proposed modifications to the roof form and porte cochere of the ILU will have no adverse additional amenity impacts and the approved RACF will remain unaltered. The development as modified remains compatible with the character of the surrounding area in terms of use and level of activity.

The proposed modifications will not adversely alter the bulk, scale and character of the development and will generally maintain the approved footprint of the development. The majority of changes are located internally, with alterations to the roof form, porte cochere and access arrangements maintaining compatibility within the character of the locality as originally approved.

Each of the buildings would have well-articulated facades, comprise a range of building materials and colours and feature roof elements. The upper portions of the buildings comprise lightweight materials in parts to reduce building mass and soften the structures from within the streetscape. Suitable proposed and existing landscaping would also improve streetscape character and complement the locality.

The development as modified is acceptable with respect to neighbourhood amenity and streetscape.

##### 2. 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.

The proposed modifications would not alter the approved setbacks or significantly alter location of openings in relation to neighbouring properties. Whilst the revised vehicular accessway would result in additional vehicular movements, it is considered that the vehicular areas are appropriately separated from the dwellings within the ILU's to ensure no additional acoustic issues. The retention of vegetation on the site would minimise acoustic and amenity impacts of the development to surrounding properties.

In summary, it is considered that the separation distances, acoustic measures and proposed/existing landscaping would ensure the privacy outcome is maintained as originally approved.

##### 3. 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 the modified development. It is considered that the modified development would not significantly change the overshadowing impacts of the development and the development as modified would not have an unreasonable impact on the solar access of adjoining properties.

##### 4. Stormwater

Amended civil drawings were submitted as part of the proposed modification to reflect the detail in the modified design, relating to driveway design, watercourse clearance, drainage pits and pipes and on-

site detention systems. The civil drawings provide for additional water quality and quantity measures to vehicular access amendments. Council's engineering assessment confirms the modified proposal maintains consistency with the approved stormwater management strategy for the site and is acceptable subject to the implementation of conditions as per the original consent.

#### 5. Crime prevention

The modified development would maintain passive surveillance over common areas around buildings and to the public domain. 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 adequate external lighting to be installed.

#### 6. Accessibility

The access report and traffic safety report submitted with the modified application adequately demonstrate compliance with Schedule 4 of the Housing SEPP, in terms of wheelchair access, security and pathway lighting, car parking and unit design. Conditions are applied to the consent requiring fulfilment of accessibility commitments pertaining to the development. The development as modified is acceptable with respect to Clause 85 of the Housing SEPP, subject to fulfilment of conditions.

#### 7. Waste management

An amended Waste Management Plan was submitted with the application to reflect the proposed changes. Conditions have been modified to reflect these changes and the proposed waste management (during construction and ongoing) requirements for the various stages on the development.

#### Clause 107 - Non-discretionary development standards for hostels and residential care facilities

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 107 is required in this regard.

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

The Housing SEPP includes non-discretionary development standards whereby compliance cannot be used to refuse development consent. **Table 6** sets out the modified proposal's compliance with these standards:

**Table 6: Consideration of Non-discretionary Development Standards in the Housing SEPP**

Clause	Control	Requirement	Approved	Proposed	Comply
108(2)(a)	Building height	9.5m	10.5m	10.5m (excl. services)	N
108(2)(b)	Building height including services	11.5m	10.5m	12.05m	N
108(2)(c)	Density and Scale	0.5:1	0.65:1	0.59:1	N
108(2)(e)	Landscaped Area	30%	42%	39%	Y
108(2)(f)	Deep Soil %	>15%	>15%	21.1%	Y

108(2)(g)	Solar Access (3hrs between 9am & 3pm)	70%	>70%	80.2%	Y
108(2)(h)	POS	15m <sup>2</sup> ground	>15m <sup>2</sup> ground	Unchanged	Y
108(2)(i)	Balcony Area (1 <sup>st</sup> floor and above)	10m <sup>2</sup>	>10m <sup>2</sup>	>10m <sup>2</sup>	Y
108(2)(j)	Car Parking (0.5 spaces per bedroom)	115 spaces	177 spaces	171 spaces	Y

The provisions of Clause 108 are not development standards that can be used to refuse development consent for ILUs. The variation to building height is discussed within Section 3.4.8.2 of this report.

With regards to density, the modified development includes a minor reduction when compared to the approved development in terms of floor space ratio. The proposal will maintain the number and mix of ILU's and does not propose any change to the RACF. Overall, the development will not result in any discernable impact in terms of bulk and scale and the development will retain the built form as originally approved. No further concerns are raised in this regard.

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

Under former SEPP HS&PD, a Site Compatibility Certificate (SCC) was required.

A Site Compatibility Certificate was issued by the Department of Planning and Environmental on 16 April 2020 pursuant to Clause 25(4)(a) of SEPP HS&PD which deemed the application as permissible with consent on the site.

It is considered that the modified development is consistent with the provisions of this Site Compatibility Certificate which renders the proposed modified development as permissible with consent.

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 considered appropriate would not significantly alter on the visual impact of the development within the locality or adjoining properties.

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.

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

At the time of preparing this report, State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development (SEPP 65) has also been repealed by the Housing SEPP. Notwithstanding, given the application was lodged prior to 14 December 2023, the saving provisions apply, and the proposal requires assessment against SEPP 65. The proposal complies with the design quality principles of SEPP 65 and is generally consistent with the prescriptive measures within the Apartment Design Guide.

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. The submitted Statement contained 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 considers that the modified proposal satisfactorily addresses/ incorporates the Design Quality Principles of SEPP 65 as considered in Table 7 below.

**Table 7: Schedule 1 Assessment - SEPP 65**

<b>SEPP 65 - Schedule 1 Assessment</b>	
<b>Principle</b>	<b>Compliance</b>
<b>1. CONTEXT AND NEIGHBOURHOOD CHARACTER</b>	<b>Yes</b>
<p><b>Comment:</b> The site is located within a rural landscape zone. The proposed development is consistent with the Site Compatibility Certificate issued by the DPE as is compatible with the surrounding locality which includes a mix of land uses. The development has been designed to be compatible with the neighbourhood, would harmonise well within the desired future context and provides suitable seniors accommodation to the area. 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.</p> <p>The scale of the development is considerate 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 adequate landscaping, open space and separation between buildings and neighbouring properties.</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 a number of internal and external changes to the ILU's including to modify the basement footprints and layouts, arrangement of communal areas surrounding the ILU's and includes a number of external changes throughout the ILU buildings. There are no changes to the overall number of ILU's or the number of 2- or 3-bedroom units. The overall GFA/FSR would be reduced as a result on the changes to the basement levels.</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 and NatHERS Certificate for the amended development. In achieving the required BASIX targets for sustainable water use, thermal comfort and</p>	

energy efficiency, the proposed development would achieve efficient use of natural resources, energy and water throughout its full life cycle, including demolition and construction.	
<b>5. LANDSCAPE</b>	<b>Yes</b>
<p><b>Comment:</b> The modified proposal would not require the removal of any additional trees. The proposal has been designed to facilitate the retention of significant trees and vegetation on the site.</p> <p>The proposal would remain compliant in terms landscaping and deep soil planting. The proposed landscape scheme incorporates the adequate landscaping within the context of the site to optimise useability, privacy and social opportunity equitable access and respect for neighbour's amenity. The proposed landscape is considered practical in terms of establishment and long-term management</p>	
<b>6. AMENITY</b>	<b>Yes</b>
<p><b>Comment:</b> The modified proposal includes a number of minor internal design changes to each of the units, including minor alterations to balcony sizes and arrangements.</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 central lifts connecting the basement and all other levels.</p>	
<b>7. SAFETY AND SECURITY</b>	<b>Yes</b>
<p><b>Comment:</b> The entry points are generally legible and well defined and are not in conflict with the principle of safety.</p> <p>The proposal include adequate Crime Prevention Through Environmental Design Principles (CPTED) and includes details of surveillance, access control, territorial reinforcement and space management such as artificial lighting in public places; attractive landscaping whilst maintaining clear sight lines; security coded door lock or swipe card entry; physical or symbolic barriers to attract, channel or restrict the movement of people; security controlled access to basement car park; intercom access for pedestrians; and security cameras located at the entrance of the building. Appropriate conditions of consent are recommended to require compliance with the above matters.</p>	
<b>8. HOUSING DIVERSITY AND SOCIAL INTERACTION</b>	<b>Yes</b>
<p><b>Comment:</b> The proposal is a purpose-built seniors housing development which seeks to provide on-site services and amenities. The inclusions of residential care facility beds provide the opportunity to transition from independent living to higher care living.</p>	
<b>9. AESTHETICS</b>	<b>Yes</b>
<p><b>Comment:</b> The proposed modification would not substantially 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>	

### 3.4.4.1 Apartment Design Guide (ADG)

SEPP 65 requires consideration of the Apartment Design Guide. The ADG includes development controls and best practice benchmarks for achieving the design principles of SEPP 65. **Table 8** sets out the modified proposal's compliance with the ADG:

**Table 8: Apartment Design Guide Assessment**

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)	36%	15% of site area	Yes
Building Separation (3F-1)  - <i>Ground – up to 4 storeys (all ILU buildings)</i>	12m	12m between habitable windows and balconies. 6m to non-habitable	Yes
Car Parking (3J-1)	115 spaces (approved 177 spaces)	171 spaces	Yes
Solar Access (4A-1)  - <i>Living rooms</i>  - <i>Private open space</i>	80% - 72/91  80% - 72/91	2 hours for 70%  2 hours for 70%	Yes  Yes
No Solar Access allowable for units (4A-1)	2% - 89/91	15% of units (max)	Yes
Natural Cross Ventilation (4B-3)	79.1% - 72/91	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)  - <i>2 bed units</i>  - <i>3 bed units</i>	>70m <sup>2</sup>  >90m <sup>2</sup>	70m <sup>2</sup>  90m <sup>2</sup>	Yes  Yes
Minimum Window Size (4D-1)	>10%	10% of floor area of room	Yes

Habitable Room Depth (4D-2)	max. 8m	max. 8m from a window (max for open plan) or 2.5 x ceiling height	Yes
Apartment Layouts - Minimum Bedroom Size (4D-3)			
- <i>Master bedroom</i>	10m <sup>2</sup>	min 10m <sup>2</sup>	Yes
- <i>Other bedrooms</i>	9m <sup>2</sup>	min 9m <sup>2</sup>	Yes
Apartment Layouts - Combined Living / Dining Rooms Minimum Width (4D-3)			
- <i>2/3 bed units</i>	4m	4m	Yes
Apartment Layouts - Cross Through Apartments (4D-3)	>4m	min 4m width	Yes
Minimum Balcony Size (4E-1)			
- <i>2 bed units</i>	>10m <sup>2</sup>	10m <sup>2</sup> / 2m depth	Yes
- <i>3+ bed units</i>	>12m <sup>2</sup>	12m <sup>2</sup> / 2m depth	Yes
Maximum Number of Units on a Single Level (4F-1)	max. 4	8 units off a circulation core	Yes
Storage (4G-1)			
- <i>2 bed units</i>	>8m <sup>3</sup>	8m <sup>3</sup>	Yes
- <i>3+ bed units</i>	>10m <sup>3</sup>	10m <sup>3</sup>	Yes
- <i>% located within unit</i>	<50%	50%	No

With exception of 50% of the required storage area being located within the units, the proposal is generally compliant with the requirements of the ADG. In support of this variation, it is considered that there is ample storage within the units and basements combined achieve compliance with the minimum requirements of the ADG. No further concerns are raised in this regard.

### **3.4.5 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**

#### 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 requiring verification that the site has been remediated in (refer to condition No. 56). 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.

### **3.4.7 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 2.122 of the Transport and Infrastructure SEPP given the proposal was considered a Traffic Generating Development including 200 or more car parking spaces on the site.

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 modified proposal would not be increasing the overall parking demands on the site.

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

### **3.4.8 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.

#### **3.4.8.1 Zoning and Permissibility**

The subject land is zoned RU2 Rural Landscape under HLEP. The objectives of the zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base;*
- *To maintain the rural landscape character of the land;*
- *To provide for a range of compatible land uses, including extensive agriculture;*
- *To encourage land uses that support primary industry, including low-scale and low-intensity tourist and visitor accommodation and the provision of farm produce direct to the public;*
- *To ensure that development does not unreasonably increase the demand for public infrastructure, services or facilities.*

The proposed development is defined as 'Senior Housing' under the HLEP. Seniors Housing is prohibited in the RU2 Rural Landscape zone.

A Site Compatibility Certificate was issued by the Department of Planning and Environment on 16 April 2020, pursuant to Clause 25(4) of SEPP HS&PD which deemed the application as permissible with consent on the site. The modified development is consistent with the provisions of the Site Compatibility Certificate which renders the proposed development as permissible with consent.

### 3.4.8.2 Height of Buildings

Clause 4.3 of HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 10.5m. The proposal does not comply with this provision.

The proposal seeks to modify the ILU component of the development include seven (7) buildings of three (3) storeys in height. The site is subject to a height limit of 10.5m.

The development was originally approved with a maximum building height of 10.5m, consistent with the maximum building height for the site as prescribed under Clause 4.3 of the HLEP.

This modification application proposes a variation to the maximum height limit to provide lift overruns as result of technical requirements for the lift size and overruns which was not adequately considered under the original approval. The maximum extent of non-compliance being 12.05m for Building D which is a 1.55m or 14.7% variation to the development standard.

The proposed lift overruns require an increased 'shaft headroom' for the upper most floor.

Further to this non-compliance, it is noted that in the Land and Environmental Court case of *Gann & Anor v Sutherland Shire Council (2008)*, the Court held that there is power to modify a development application (via a modification application) where the modification would result in the breach of a development standard. The Court were of the view that the development standards did not operate to prohibit the granting of consent if they were not complied with. The Court held that despite a SEPP No.1 objection (now known as Clause 4.6 variation) not being required, a Section 96 application (now known as Section 4.55 or 4.56 application) required the consent authority to take into consideration those matters referred to in Section 4.15 of the Act. These matters are discussed within the body of this report and the proposal is considered acceptable in this regard.

In addition, the applicant noted the following summarised matters in support of the height variation:

- *Lift overruns are non-habitable structure and do not account for any GFA, are appropriate characteristic of the site and will not result in a development which is beyond the intensity or infrastructure capacity of the locality.*
- *As these elements are non-habitable in nature, they will not increase the density or intensity of the development beyond that originally approved.*
- *The non-compliances of the lift overruns are relatively minor when considering the characteristic of the site (including size, scale and shape), in addition to the built form of the approved development.*
- *Accordingly, the proposal is acceptable within regards to objective (a) under Clause 4.3 of the HLEP which is outlined as follows:*
  - a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*
- *The modified proposal will continue to provide a high quality seniors housing development which will not be antipathetic to any of the RU2 zone objectives. The proposal will sit comfortably within the locality and will continue to be compatible with the surrounding locality as originally approved.*

- *The modified proposal does not alter the degree in which compliance with the standard and zone objectives was achieved under the originally approved development.*
- *Overall, the proposal is considered to achieve a planning purpose of enhancing amenity and building efficiencies in the absence of any additional or new adverse impacts.*

Although an objection pursuant to Clause 4.6 is not required in the circumstances of this application, the reasoning applied in *Wehbe v Pittwater Council (2007) NSW LEC 827* is still considered appropriate to rely upon to determine that the proposal is well founded despite the departure from the Clause 4.3 development standard under the HLEP. In the judgement, Preston CJ set out 5 different ways in which an objection may be well founded, and that approval of the objection may be consistent with the first of these in that the objectives of building height and the RU2 zone are achieved.

It is also important to note that in *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSW LEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Of note being that there does not need to be a “better” planning outcome.

In support of this variation, it is noted as follows:

- The lift overruns are limited to a relatively minor footprint in comparison to the overall building form.
- The roof forms of the buildings remain compliant with the 10.5m maximum height limit; and
- The lift overruns are centrally located and adequately setback to ensure they are screened from the public domain.

As such, the modified proposal continues to be consistent in relation to the objectives of the zones and building height requirements under the HLEP. Given the satisfaction with the zone and development standard objectives are achieved, insistence on strict compliance is considered to be unreasonable and unnecessary under the circumstances.

In summary, it is considered that the variation in height as a result of lift overruns is acceptable under Clause 4.3 of the HLEP and no further concerns are raised in this regard.

#### **3.4.8.3 Earthworks**

Clause 6.2 of HLEP states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

The proposed modification would not significantly alter the extent of earthworks required to accommodate basement car parks. 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 to earthworks.

#### **3.4.8.4 Design Excellence**

Clause 6.8 of the HLEP provides considerations for the delivery of the highest standard of architectural and urban design. Whilst the original and modified development was not considered by a Design Excellence Panel, a detailed assessment of the development was undertaken under the original development in line with the *Seniors Living Policy: Urban Design Guidelines for Infill Development* which had now been repealed and replaced with the *Seniors Housing Design Guide*.

As outlined in the body of this report, it is considered that the proposed modification will continue to satisfy the applicable requirements of these design guides and adequately meets the design principles for seniors housing under the Housing SEPP.

As such, it is considered that the development as proposed is consistent with the requirements of Clause 6.8 of the HLEP and achieves a good design outcome for the site and a seniors housing development.

### **3.5 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.

### **3.6 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 RU2 zone pursuant to HLEP and therefore the built form controls within Part 2 of the DCP are not applicable. However, the relevant general provisions within Part 1 of the HDCP are applicable to the development. This includes provisions relating to stormwater management, waste management, traffic, bushfire, tree and vegetation protection, biodiversity, landscaping 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 (former Section 94) applies to the development as it would result in an additional 90 residential dwellings in lieu of the one (1) existing residence. Accordingly, the requirement for a monetary Section 94 contribution would be required as a condition of consent should the application be approved.

Hornsby Shire Council Section 94A Contributions Plan 2014 – 2024 applies to the RACF portion of this development as the estimated costs of works is greater than \$100,000. An appropriate condition of consent was imposed under the original consent requiring the payment of a contribution in accordance with the Plan. No changes are required under this modification.

### **3.7 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.

### **3.8 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.

Section 62 (consideration of fire safety) of the 2021 EP&A Regulation are relevant to the to the proposal.

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

### **3.9 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:

### **3.9.1 Context and Setting**

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

### **3.9.2 Access and Traffic**

The proposed development would not detrimentally impact on traffic around or through the site, as detailed in the supplied Traffic Statement prepared by Stantec Australia. The development does not change the number of units or mix of units to be constructed on the site. The overall general access arrangements within development have not been modified. An additional crossing is proposed off Quarry Road to improve manoeuvrability for the emergency vehicle access to western side of the site. No concerns are raised to this amendment on traffic and safety grounds.

### **3.9.3 Public Domain**

The proposed development would have negligible impact on the public domain surrounding the site, despite its non-compliance with the height due to the modified lift overruns (further discussed in Section 3.4.8.2 of this report). 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 surrounding 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.

### **3.9.4 Utilities**

With the exception of upgraded stormwater management and water quality systems to reflect the modified development, no further changes are proposed in this regard.

### **3.9.5 Heritage**

Clause 5.10 of HLEP sets out heritage conservation provisions for Council. The site does not include a heritage item and is not located in the vicinity of a heritage listed items or within a heritage conservation area. Accordingly, no further assessment regarding heritage is necessary.

### **3.9.6 Water/ Air/ Soils Impacts**

Upgraded stormwater, OSD infrastructure and water quality systems are required as part of this proposal and conditions to reflect these requirements have been updated accordingly.

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

### **3.9.7 Flora and Fauna Impacts**

This modification application does not involve the removal of any additional trees or changes to footprint that would further impacts significant vegetation on the site.

Vegetation on the site does contain remnant patches of Blackbutt Gully Forest, a locally significant vegetation community and Sydney Turpentine Ironbark Forest, listed as Critically Endangered under the NSW Biodiversity Conservation Act 2016. Remnant patches of vegetation and the constructed swale are to be managed in perpetuity in accordance with an Integrated Bushfire and Vegetation Management Plan as per deferred commencement condition 1 of the consent.

The modifications to the basement parking for buildings C & D have removed connectivity between buildings B & E to the west which passed under the proposed swale. The proposed basement parking is solely below the associated building and within existing building footprints. The swale dimensions have been retained and there is no increased impact on retained patches of vegetation. The basement footprint for building C is proposed to extend towards retained tree 10 but does not enter the TPZ. Arboricultural considerations of this tree determined that conditions were adequate to protect this tree.

The Ecological Assessment prepared by Cumberland Ecology deemed that the level of impacts of the proposed modifications are the same as the previously approved development. It is considered that the conditions of consent previously issued are sufficient to address matters affecting biodiversity values.

The proposal does not require the removal or modification of a significant area of vegetation or habitat and is generally consistent with the outcomes of the original approved development.

### **3.9.8 Natural environment**

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

### **3.9.9 Noise and vibration**

Noise and vibration associated with construction impacts are expected and would be managed and mitigated via the imposition of appropriate conditions of development consent. Any noise and vibration impact to the proposed dwellings have been considered and appropriate conditions are recommended under the original consent to manage any impacts.

### **3.9.10 Natural Hazards**

The original development application was integrated development requiring General Terms of Approval from the NSW Rural Fire Service (RFS) and the Natural Resources Access Regulator (NRAR) NSW. The modified proposal was re-referred to NSW RFS to review the modified changes and request for review of GTA's due to an error in the original approval. The modified proposal was not required to be re-referred to NRAR. No objections were raised to the modified proposal in this regard.

Updated GTA's were provided by the RFS with the error rectified and no further conditional requirements. These GTA's form part of the modified recommended conditions of consent.

### **3.9.11 Safety, Security and Crime Prevention**

CPTED Principles have been considered into the design and no concerns are raised. Appropriate conditions of consent for safety and security measures to be installed in the unit buildings and within the complex have been applied to the modified staged consent.

### **3.9.12 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. The addition of greater population in a well serviced area is also a positive economic factor.

### **3.9.13 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.

### **3.9.14 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.

### 3.9.15 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 and included as a condition under the original consent. No changes are proposed in this regard under the modified consent.

### 3.9.16 Cumulative Impacts

The proposed development would not result in any cumulative impacts. The modified development represents a development of the same scale and footprint with no changes to the number or mix of units.

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

### 3.10 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 senior’s development. The proposed modification would not have any impact with respect to the suitability of the site for the development.

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

The submissions are considered in Section 4.3 of this report.

### 3.12 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 91 ILU’s and 66 beds within the RACF. 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.

### 3.13 Part 5 of the 2021 EP&A Regulation

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 9** below.

**Table 9: 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 Leigh Buckton from Living Choice Australia, with consent from the owner of the land being Dural Gardens Land.	Y

NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (CI 98(6)).	The land is not owned by a Local Aboriginal Land Council and consent is not required.	N/A
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 4.56 to allow for a number of amendments to the design elements of the approved ILU's including associated landscape and civil works and the addition of staging to the consent 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. Only minor changes are proposed largely to the internal layout of the dwellings, the height and roof from due to lift overrun amendments, the configuration of the basement, the landscaping elements of the proposal and accessibility throughout the site. 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))	BDAR not required.	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 4.56(1) of the EP&A Act.	Y
BASIX Certificate (CI 100(3))	The proposed modification does involve a BASIX development and an updated BASIX Certificate has provided.	Y
Penrith Lakes Development Corporation (CI 101)	N/A	N/A
Qualified designer statement for residential apartment development (CI 102)	The proposed modification does involve residential apartment development and a qualified designer statement; however, given the minor nature of the changes, an updated designer statement was not provided. An assessment against SEPP 65 and the ADG is provided in Section 3.4.4 of this report.	N
Mining and petroleum development consents (CI 102)	N/A	N/A
Notification and exhibition requirements (CII 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 modification application is integrated development and has been referred to the NSW RFS for concurrence as required by the EP&A Act and outlined below in **Table 10**.

**Table 10: Concurrence and Referral Agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements</b> (s4.13 of EP&A Act)			
Environment Agency Head (Environment,	<i>S7.12(2) Biodiversity Conservation Act 2016</i>	N/A	N/A

Energy & Science Group within DPIE)			
Rail authority for the rail corridor	Section 2.98(3) - SEPP (Transport and Infrastructure)	N/A	N/A
<b>Referral/Consultation Agencies</b>			
RFS	S4.14 - <i>EP&amp;A Act 1979</i> Development on bushfire prone land	N/A	N/A
Electricity supply authority	Section 2.48 - SEPP (Transport and Infrastructure) Development near electrical infrastructure	N/A	N/A
Rail authority	Section 2.97 - SEPP (Transport and Infrastructure) Development land that is in or adjacent to a rail corridor.	N/A	N/A
Transport for NSW	Section 2.121 - SEPP (Transport and Infrastructure) Development that is deemed to be traffic generating development in Schedule 3.	N/A, referred under original application. Matters resolved and would remain unchanged.	N/A
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	Yes, referred under original application and modification application due to error in NSW RFS original GTA's and further review required.	Yes, updated GTA's provided.
DPE - Heritage	S90 - <i>NPWS Act</i>	N/A	N/A
Natural Resources Access Regulator	S89-91 - <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	N/A, referred under original application.	No changes, GTA's under original consent apply.

## 4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **Table 7**.

**Table 7: Consideration of Council Referrals**

Officer	Comments	Resolved
Engineering	Comments received, amended plans adequately addressed initial concerns/RFI and driveway access over the watercourse/swale. No concerns raised with stormwater related upgrades required for modification.	Yes, all conditions under original consent apply.
Traffic	<p>Council's Traffic Engineering Officer reviewed the proposal and recommended the DA be approved on Traffic and Parking ground with all traffic conditions for DA/668/2018.</p> <p>Clause 108 for ILU's (non-discretionary standards) of the Housing SEPP requires:  <i>"0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provided, or</i></p> <p>The HDCP also requires 1 space per 5 units as visitor parking spaces.</p> <p>The off-street parking provision is sufficient for the ILU's, with 171 car parking spaces (including 8 disabled parking spaces) provided for 43 two-bedroom units and 48 three-bedroom units, visitors and staff - in excess of required parking.</p> <p>No changes to RACF parking.</p>	Yes, all conditions under original consent apply.
Waste	Comments received; no further concerns raised to amended Waste Management Plan (Rev. I), subject to updated conditions to reflect the modified development and staging of development.	Yes, conditions updated to reflect changes.
Trees	Comments received; no further concerns raised with additional impacts to tree number T10. Conditions retained and amended accordingly.	Yes, all conditions under original consent apply with the addition of a tree pruning condition for tree number T10.
Biodiversity	<p>Council's Natural Resources Branch has assessed this application and considers that the impacts on biodiversity values are consistent with the previously approved proposal.</p> <p>It is considered that the conditions of consent previously issued for DA/668/2018 (LEC 2018/0022092) are sufficient to address matters affecting biodiversity values.</p>	Yes, no issues raised, all conditions under original consent apply.

#### 4.3 Notification and Community Consultation

The modification application was notified in accordance with the Council's Community Engagement Plan from 18 September 2023 until 9 October 2023. The notification included the following:

- A sign placed on the site; and
- Notification letters sent to adjoining and adjacent properties (a rough estimate of the number of letters sent).

Council received a total of five unique submissions, comprising five objections to the proposal. The issues raised in these submissions are considered in **Table 10** below.

The issues raised in the community submissions have been addressed in this report and in the recommended conditions of consent in **Attachment A**.

**Table 10: Community Submissions**

Issue	No of submissions	Council Comments
<p><b>Traffic Impacts</b></p> <p>Submissions raised concern the development would severely impact traffic in the area.</p> <p>Overall concerns with the traffic problem in the area, requesting that this issue be addressed prior to further DA approvals.</p>	4	<p>This matter was addressed under the original application. Council's traffic assessment concluded that the proposal as modified would not have any adverse impact on the safety, efficiency and ongoing operation of traffic in the area and is acceptable with respect to the relevant sections of the Transport and Infrastructure SEPP. Refer to additional discussion under Section 3.9.2 of this report.</p>
<p><b>Parking</b></p> <p>Questions about the number of parking spaces on site for staff and visitors.</p>	1	<p>The modified proposal complies, with a total of 171 car parking spaces, including 31 visitor and 6 staff spaces allocated within the ILU component of development. There are an additional 48 visitor and staff spaces within the RACF. This level of car parking is considered appropriate for the site.</p>
<p><b>Rural Area</b></p> <p>Emphasis that Dural is a rural community and should remain that way - rural zone needs to be protected.</p>	1	<p>This matter was addressed under the original application - no significant changes in this regard.</p>
<p><b>Emergency Services</b></p> <p>Concern regarding access for emergency services and limited emergency service infrastructure in the area</p>	2	<p>This matter was addressed under original application - no change. Internal vehicular amendments would improve this aspect of the development.</p>
<p><b>Earthworks</b></p> <p>Concern regarding the amount of cut and fill required</p>	1	<p>Earthworks is considered substantially the same as the original application. The proposed modification includes a reduction in the basement area under</p>



		Buildings B and E to compensate for the proposed new basement parking below Buildings C and F. Refer to additional discussion under Section 3.4.8.3 of this report.
<b>Height and Building Footprint</b>  Concern regarding the increase in height and increase in overall building footprint.	1	Increase in height is mostly due to lift overruns - heights of roof forms are substantially the same. Refer to detailed discussion under Section 3.4.8.2 of this report.
<b>Scepticism about Revised Design</b>  Questions as to why there is a need to alter the plans that have already been through a multi stage assessment process and through the court process - scepticism about revisions and additions to the development.	1	As discussed throughout this report, it is considered that the overall design and amenity of development would be improved as a result of the modified development. There would be no significant changes to the scale of the development and the unit numbers and mix would remain the same.

## 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 Access Arrangements for Emergency Vehicles and Bushfire Requirements

Initial concerns were raised by Council with regards to the access amendments for emergency vehicles on the site and the impacts on streetscape including the addition of a 4<sup>th</sup> vehicle crossing off Quarry Road and the impact on soft landscape elements to the modified proposal in this regard (discussed further in Section 5.2 below). Council also had concerns that the additional crossing would promote vehicles from the site and surrounding areas using the access as a thoroughfare from Quarry to Vineys Road. Council also questioned whether the full extent of the emergency access perimeter roads was required and that further response from a bushfire consultant should be provided in this regard.

The Applicant provided a response from the bushfire consultant confirming that the emergency access would be required around the perimeter of the site as originally approved in accordance with *Planning for Bushfire Protection 2019*; however, further noted that there was an error with the GTA's provided by the NSW RFS under the original application with respect to the width of the accessway identified.

The modified proposal was re-referred to NSW RFS to review the modified changes and review of the original GTA's. Updated GTA's were provided by the RFS with the error rectified and no further conditional requirements. These updated GTA's form part of the modified consent.

In addition, to ensure the emergency access is not used by residents and people within the area as a thoroughfare, a condition is recommended requiring signage and collapsible/retractable bollards be installed at the entries to the emergency access perimeter roads to ensure these roads are used for emergency access only.

As such, it is considered that Council's initial concerns with regards to these matters have been adequately resolved.

## 5.2 Loss of Landscaping

Initial concerns were raised by Council with considerable changes to landscaping proposed and the addition of a number of hardstand spaces that were originally approved as soft landscaping around the perimeter and within the common areas of the site. There were also concerns raised to the additional crossing off Quarry Road and loss of landscaping within the front setback as a result.

In response to these concerns, amended plans were submitted increasing the soft landscaping around the perimeter of the site, including the provision of additional turfed areas that form part of the emergency access, similar to that originally approved. Additional soft landscaping to the common areas within the central parts of the site were also made.

Further, with regards to the additional vehicle crossing, it was demonstrated by the Applicant that the additional crossing off Quarry Road would result in an increased level of soft landscaping within the front setback of the site and improved maneuverability due to the deletion of the driveway connection off the central vehicular crossing that was previously approved. This is illustrated in Figure 3 below:



Figure 3: Snip from Planning Ingenuity RFI letter dated 11 March 2024.

As demonstrated and discussed above, the amended proposal in terms of landscaping is considered acceptable and suitable within the context of the site and locality and no further concerns are raised in this regard.

## 5.3 Increase in Height due to Lift Overruns

Refer to detailed discussion under Section 3.4.8.2 of this report. An assessment of this variation concluded as follows:

- The lift overruns are limited to a relatively minor footprint in comparison to the overall building form;
- The roof forms of the buildings remain compliant with the 10.5m maximum height limit; and
- The lift overruns are centrally located and adequately setback to ensure they are screened from the public domain.
- The modified proposal in terms of height remains consistent in relation the objectives of the zone and building height requirements under the HLEP.
- Insistence on strict compliance is considered to be unreasonable and unnecessary under the circumstances.

- In summary, it is considered that the variation in height as a result of lift overruns is acceptable under Clause 4.3 of the HLEP and no further concerns are raised in this regard.

#### **5.4 Tree Preservation**

The basement footprint for building C is proposed to extend towards retained tree number T10. Council had initial concerns regarding the additional impacts to this tree as result of the modified development.

Council arboricultural considerations of this tree determined that conditions were adequate to protect this tree. As such, all conditions under the original consent would apply with the addition of a tree pruning condition for any deadwood present for tree number T10. It is considered that tree number T10 can be adequately retained and protected with appropriate tree protection measures. No further concerns are raised in this regard.

#### **5.5 Setback Variation of Porte Cochere**

Whilst there is no specific setback applicable to this type of development in a rural zone, a site of this size in a rural area generally requires a front setback of 15 metres under Part 2 of the HDCP. The Housing SEPP also identifies that setbacks should be consistent with the existing building lines of neighbouring developments.

In support of the setback variation of the porte cochere, it is noted as follows:

- With the exception of the porte cochere at a setback of 7 metres from the Quarry Road front boundary, the remaining buildings on site would be consistent with the 15 metre setback.
- The porte cochere has been designed to conceal the building services in a location which reduces the impacts of these services to the streetscape and amenity to surrounding properties.
- The porte cochere would provide a suitable entry to the seniors living complex and would be a more user friendly outcome for pick up and drop off residents and visitors in terms of protection for the weather.
- Suitable landscaping within the front setback to Quarry Road would provide softening to the seniors living complex from within the streetscape and the porte cochere would effectively integrate with the public domain.

#### **5.6 Waste Management**

There were a number of concerns initially raised by Council's waste officers with regards to the modified development in terms waste management for the seniors living complex. This was as a result of the changes to the basement designs and accessibility arrangements.

In response to a number of requests for further information, an amended Waste Management Plan was submitted with the application to reflect the proposed changes to the satisfaction of Council's waste officers. Conditions have been modified to reflect these changes and the proposed waste management (during construction and ongoing) requirements for the various stages on the development.

### **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 for design modifications to an approved seniors living development, specifically modifications to some of the design elements of the approved Independent Living Unit's (ILU's) including associated landscape and civil works and the addition of staging to the consent can be supported.

Overall, it is considered that the changes are proposed to improve the efficiency, operation, constructability, economic feasibility and overall design of the Seniors living development.

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**.

## **7 RECOMMENDATION**

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It is recommended:

- That the Modification Application (DAM/668/2018/A) for amendments to a seniors living development including the addition of staging, comprising the demolition of existing structures and the construction of 91 independent living units and a 66 bed residential care facility with associated works be APPROVED pursuant to Section 4.56(1) 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: Modified Recommended Conditions of Consent
- Attachment B: Architectural Plans including Staging Plan
- Attachment C: Landscape Plans