



COUNCIL ASSESSMENT REPORT - MODIFICATION APPLICATION

SYDNEY NORTH PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PSSNH-553 - DA/394/2015/F
PROPOSAL	Section 4.55(2) application- Modification to Independent Living Units - Buildings A and B - Stage 3 of the seniors living development and deletion of conditions 81 to 85
ADDRESS	Lot 100 DP 1259619, No. 35 Pacific Highway, Wahroonga
APPLICANT	Catholic Healthcare Limited
OWNER	Catholic Healthcare Limited
MOD LODGEMENT DATE	1 August 2024
ORIGINAL DA DETERMINATION DATE	2 December 2015
APPLICATION TYPE	Modification Application under Section 4.55(2)
REGIONALLY SIGNIFICANT CRITERIA	Section 4.55(2) - original cost of works is over \$30 million
CIV	\$119,037,600 - Unchanged
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • State Environmental Planning Policy (Housing) 2021 • 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 • Hornsby Development Control Plan 2024
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Nil
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • DA/394/2015/F - Section 4.55 (2) - Modification - Amended BASIX NATHERS Compliance - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Amended Architecture Design Report - 35 Pacific Highway, Wahroonga

	<ul style="list-style-type: none"> • DA/394/2015/F - Section 4.55 (2) - Modification - Amended Architectural Plans - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Amended Design Verification Statement - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Access Report - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Noise Impact Assessment - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - BCA Assessment Report - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Landscape Drawings - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Landscape Design Report - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Statement of Environmental Effects July 2024 - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Stormwater Management Report - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Site Survey - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Traffic and Parking Assessment - 35 Pacific Highway, Wahroonga • DA/394/2015/F - Section 4.55 (2) - Modification - Waste Management Plan - 35 Pacific Highway, Wahroonga
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	18 December 2024
PLAN VERSION	Various - See Condition 1 for full list of approved documentation
PREPARED BY	Charley Wells
COI DECLARATION	No conflict of interest declared
DATE OF REPORT	3 December 2024

EXECUTIVE SUMMARY

The modification application has been lodged pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and seeks consent for design modifications to an approved seniors living development, specifically Stage 3 of the development for the construction of Buildings A and B.

The original development application No. DA/359/2015 was approved by the Joint Regional Planning Panel (Sydney West Region) on 2 December 2015, for the demolition of existing structures and the erection of a residential care facility for 122 residents, five independent living unit buildings varying in height from 3 to 5 storeys containing 168 dwellings and 259 car parking spaces, community facilities, café and associated works. The development was approved in three stages. Stages 1 and 2 for the construction of the residential care facility and Buildings C, D and E have been completed. The modification application includes the relevant information required by Clause 100 of the Environmental Planning and Assessment Regulation 2021 ('2021 EP&A Regulation').

The application is referred to the Sydney North Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause 2 of Schedule 6 State Environmental Planning Policy (Planning Systems) 2021 as it comprises General Development over \$30 million. The proposed modification satisfies the criteria to be considered by the Panel in the Instruction issued pursuant to Clause 275(2) of the EP&A Regulation 2021 (formerly CI 123BA of the Regulation 2000).

The application proposes design changes to the two independent living unit buildings identified as Buildings A and B. The modified proposal would result changes to the basement including a reduction in basement excavation and driveway relocation. The floor levels throughout the buildings would be raised by 1m and the pitch of the roof elements would be reduced. The proposal would increase the number of 3-bedroom units due to market demand.

The modified proposal has been publicly exhibited in accordance with the Hornsby Development Control Plan 2013. No submissions were received.

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) and State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development (SEPP 65) which was repealed by State Environmental Planning Policy (Housing) 2021 (Housing SEPP). In most relevant aspects, the provisions are the same. The proposal is generally consistent with the prescriptive measures within the Apartment Design Guide. The proposal would not alter the original development's compliance with any other environmental planning instruments.

The proposed modification is considered to satisfy the substantially the same development test required by Section 4.55 of the EP&A Act. The design changes proposed under this consent are generally minor and would not significantly intensify the development.

Following consideration of the matters for consideration under Section 4.15(1) and 4.55 of the EP&A Act, it is considered that the proposed modification can be supported.

RECOMMENDATION

THAT pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, Development Application No. DA/394/2015 for a seniors housing development comprising a residential care facility with 122 beds and five buildings containing a total of 168 independent living units at Lot 100 DP 1259619, No. 35 Pacific Highway, Wahroonga be amended as detailed in Attachment A of this report.

1 THE SITE AND LOCALITY

1.1 The Site

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

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

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

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

The site is no longer identified as bushfire prone.

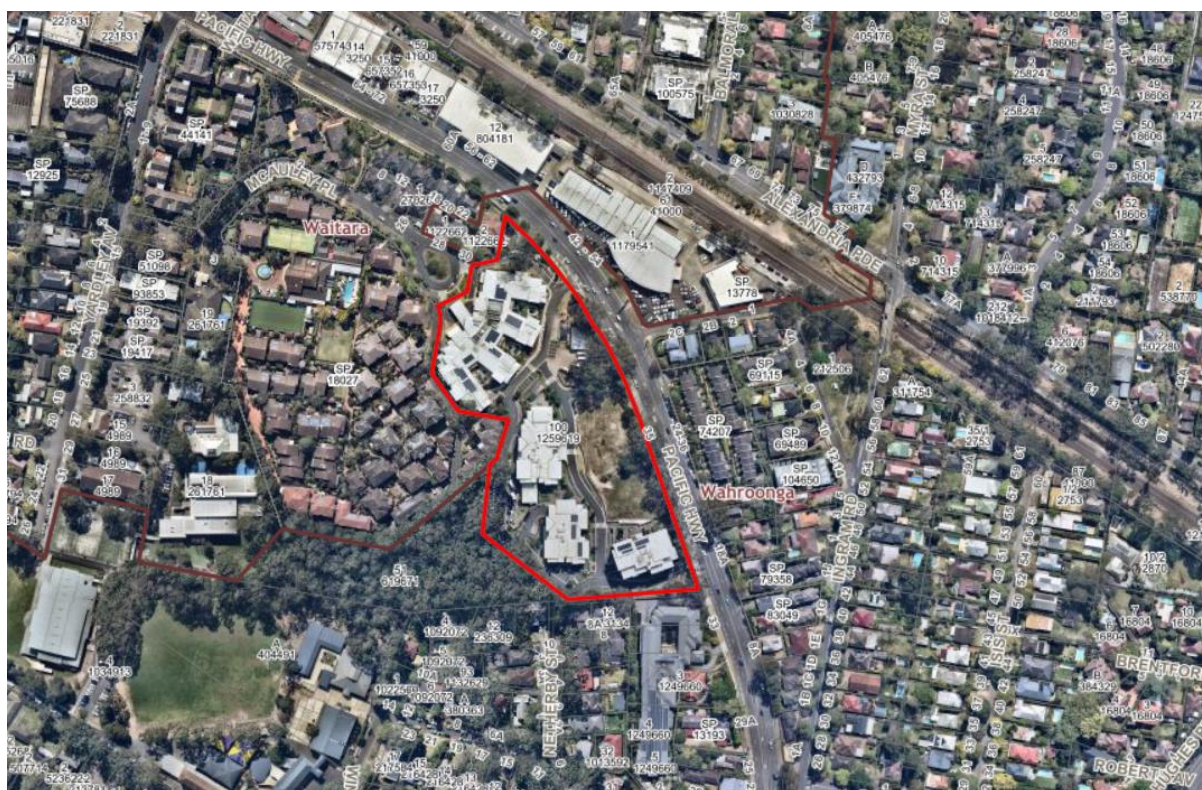


Figure 1: Near map Aerial image - 21 January 2024

1.2 The Locality

The site is located 1.2km from the Hornsby Town Centre and approximately 300m from Waitara Station. The site is located within an area containing a variety of uses, including housing for the aged to the north-west and west, bushland to the west, low density one and two storey dwellings to the south, a

three-storey residential aged care facility to the southeast, two storey multi-unit housing developments to the east and motor showrooms to the north-east.

2 THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

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

Basement:

- Removal of the lowest basement level under Building A (Basement Level 02).
- The previous internal ramp to basement carpark levels within Building C is removed.
- Relocation of the basement driveway entry to be under Building A rather than off to the side.
- Basement Level 01 would be raised by 1 metre.
- The basement level car park would accommodate 82 parking spaces including 4 tandem spaces and 3 accessible spaces.
- Lift access would be provided to Buildings A and B.

Building A:

- Floor levels raised by 1 metre throughout the building.
- Apartment layouts to the southern half of levels 1 to 4, have been amended and corner apartments have been changes from two bed to three bed.
- Northeast apartments on Levels 1 to 4, have also been amended, to incorporate the space previously adjacent to the apartments.
- Building entry relocated to southern façade with access from central landscaped courtyard.
- Addition of a community room within ground level of building A.
- GFA increased by 112m².
- External wall height increased by 1 metre with roof elements reduced resulting in an increase in roof height of 530mm.
- Roof stair access removed resulting in a reduction in maximum building height of 700mm to 900mm.

Building B:

- Communal facilities redesigned on lower ground floor level.
- Separate driveway access provided to car parking level comprising 22 spaces including 10 tandem spaces and 2 accessible spaces.
- Apartment layouts to the southern half of levels 1 to 4 have been amended and corner apartments have been amended from two bedrooms to three bedrooms.
- Northeast apartments on Levels 1 to 4, have also been amended, to incorporate the space previously adjacent to the apartments.
- GFA increased by 32m².

- External wall height increased by 1 metre with roof elements reduced resulting in an increase in roof height of 500mm.
- Roof stair access removed resulting in a reduction in height of 700mm.

Landscaping has been adjusted to suit the reduced extent of basement and revised floor levels and is otherwise substantially consistent with the approved landscape concept proposals.

Conditions 81 to 85 would be deleted as the site is no longer bushfire prone.

The proposed modifications are summarised in Table 1 below:

Table 1: Development Data

Control	Proposal
Site area	27,390m ²
GFA	30,712.6 m ²
FSR (retail/residential)	1.12:1
Clause 4.6 Requests	N/A
No of apartments	167
Max Height	Max. RL 204.900 Building B (approx. 25m)
Car Parking spaces	105 for Buildings A and B

A summary of the modified building is outlined in Table 2 below:

Table 2: Summary of Modifications to the Building

Building	Storeys	Height	No. of units	GFA (m ²)
A	6 storeys	RL 200.900 (Plant Screen) 200.333 (+0.533m Roof feature)	39	4,977m ² (+112 m ²)
B	6 storeys	RL 204.900 (Plant Screen) 204.5 (+0.5m Roof feature)	40	5,289m ² (+32 m ²)
C (no change)	6 Storeys	RL 208.123	38	4,21.5m ²
D (no change)	4 Storeys	RL 196.708	32	3,612m ²
E (no change)	3 Storeys	RL 191.108	18	2039.2m ² (residential) 1,175m ² (community facilities)
Total			167	30,712.6 m ² FSR= 1.12:1 (previously (1.11:1))

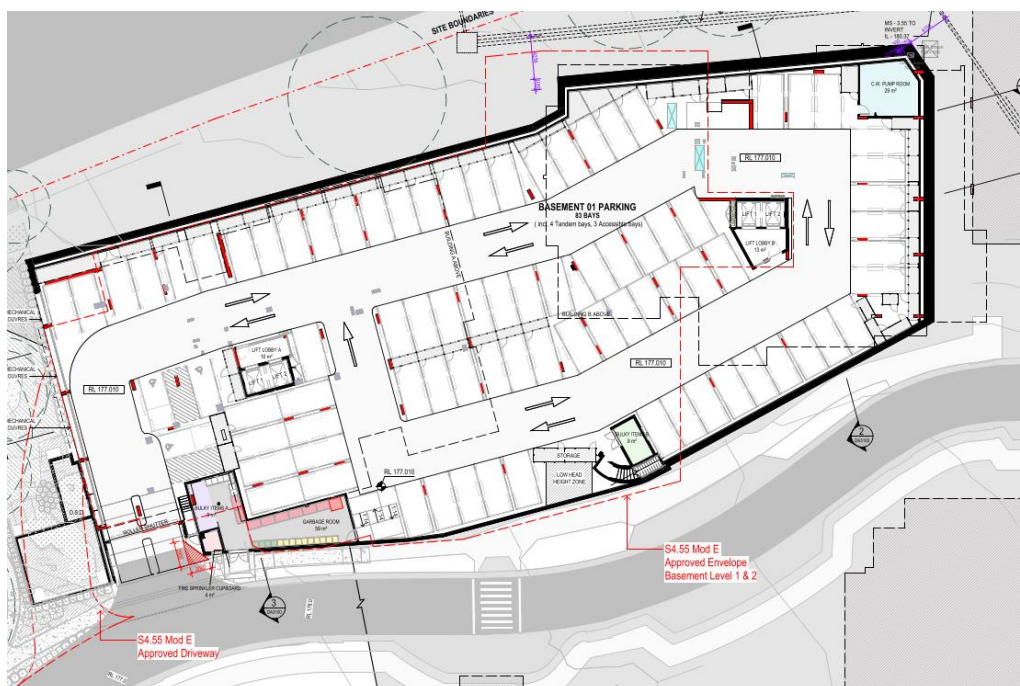


Figure 2: Basement 01 Plan prepared by Group GSA - identifies - identifies approved modified building envelope in red, reconfigured basement level and new vehicular access.

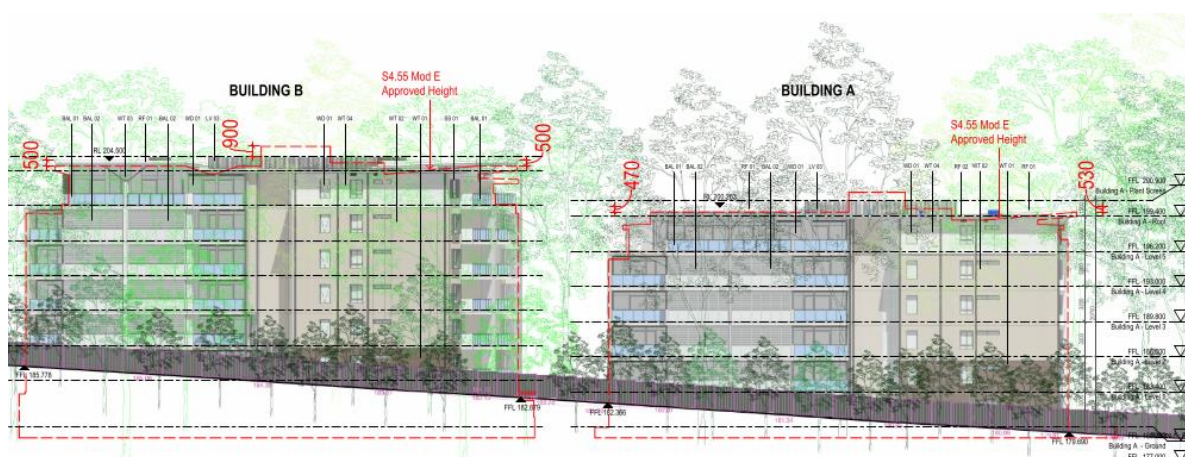


Figure 3: Building A & B - East Elevation prepared by Group GSA - identified approved modified building envelope in red and elevation facing Pacific highway.

Proposed Changes to Conditions are outlined in Table 3 below:

Table 3: Proposed Changes to Conditions

Condition No	Condition requirements	Change Proposed	Reason for Change
1 (modified)	Approved plans and documents	Modify architectural plans and supporting documentation	Modify to update plans to reflect proposed modifications
24(k), (l), (m) & (n) (modified/added)	Waste Management	Additional waste requirements to reflect design changes	To ensure adequate waste management on the site
42 (c) (added)	Survey Report	Additional waste requirements to reflect design changes	To ensure adequate waste management on the site

70 (b) (K) (m) (modified)	Waste Management Details	Additional waste requirements to reflect design changes	To ensure adequate waste management on the site
77(j), (k), (l), (m) & (n) (modified/added)	Waste Management	Additional waste requirements to reflect design changes	To ensure adequate waste management on the site
19A (modified)	On Site Stormwater Detention - Stage 3	Modify in accordance with amended stormwater drawings	To ensure adequate size and capacity
20A (modified)	Water Quality/Bio Retention System - Stage 3	Modify in accordance with amended stormwater drawings	To ensure adequate treatment of water
81 (deleted)	Bushfire Management - Asset Protection Zones	Delete condition	Site is no longer bushfire prone land
82 (deleted)	Bushfire Management - Water and Utilities	Delete condition	Site is no longer bushfire prone land
83 (deleted)	Bushfire Management - Access	Delete condition	Site is no longer bushfire prone land
84 (deleted)	Bushfire Management - Evacuation and Emergency Management	Delete condition	Site is no longer bushfire prone land
85 (deleted)	Bushfire Management - Design and Construction	Delete condition	Site is no longer bushfire prone land

2.2 Background

DA/394/2015 was determined by the Sydney North Planning Panel on 2 December 2015 and has been modified on 4 occasions.

DA/394/2015 was granted consent for:

- The construction and use of a new residential care facility ("RACF") building comprising a part 2 and part 3 storey buildings, providing accommodation for up to 122 seniors. The RACF would include a range of activities for residents and support services to provide a high level of care to residents.
- The construction of 5 independent living unit buildings (ILUs) with basement car parking spaces providing 168 dwellings for seniors.
- The provision of community facilities to meet the needs of residents including the ground floor and basement of Building E.
- The construction of internal access roads
- Site landscaping
- Provision of associated site services, stormwater management and utilities.

- Staged demolition of all remaining buildings on the site including the existing day therapy centre, the existing nursing home and independent living units and associated ancillary buildings.
- Ancillary and incidental uses to the above purposes.
- The works were approved to be undertaken in 3 stages.

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

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

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

On 8 March 2023, the Sydney North Planning Panel approved DA/394/2015/E to modify Independent Living Units within Buildings A and B associated with Stage 3 of the approved development.

The subject modification application was lodged on 1 August 2024. A chronology of the development application since lodgement is outlined in Table 4.

Table 4: Chronology of the Modification Application

Date	Event
1 August 2024	Modification application lodged
12 August 2024	Exhibition of the application
12 August 2024	DA referred to internal branches - Building, Waste Management, Traffic & Road Safety, Engineering
16 August 2024	DA referred to external agencies - Rural fire Service
30 September 2024	Request for Information from Council to applicant regarding waste management concerns
27 October 2024	Amended Waste Management Plan submitted
28 October 2024	DA re-referred to internal Waste Management branch for comment
6 November 2024	SNPP briefing
18 December 2024	SNPP determination

3 STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.55(2) 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 4.55 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 consent authority and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

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

In accordance with the NSW Land and Environment Court decision *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999), paragraphs 55 and 56, Bignold J described the process for consideration of a proposed modification of development as follows:

- “55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development.*
- 56. The comparative task does not merely involve a comparison of the physical features or components of the development as approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”*

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

This is a matter of fact and degree depending upon the facts and circumstances of the originally approved development and the modifications proposed. To assist in this process a diagram has been prepared overlaying the original approved footprint over the proposed footprint (see Figure 4 below).



Figure 4: Site Plan prepared by Group GSA - identified approved building envelope in purple.

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

- *The use remains the same being seniors housing development comprising a residential care facility (unchanged) and self-contained dwellings for seniors housing with parking;*
- *The number of residential buildings remains the same;*
- *The number of independent living units remains the same with a change to dwelling mix to suit expressed seniors' requirements;*
- *The site layout remains the same with a minor change to the orientation of Building A and adjustments to the footprint of Building B (approved as part of Mod E). The remaining four independent living unit buildings and the residential care facility are not modified;*
- *The building architecture and materials of Buildings A and B remain complementary to the approved design and the design of other buildings on the site;*
- *The minor increase in floor levels of Buildings A and B is consistent with the design intent of the original approval with taller buildings along the Pacific Highway (noting that the increase in building height is minor and compensated by changes to the gradient of roof elements and removal of stair access to roof);*
- *The FSR of the development remains generally the same at 1.1:1, increasing from 1.11:1 to 1.12:1.*
- *Landscaping remains generally the same, including importantly, the retention of mature trees along the Pacific Highway boundary;*
- *There is no change to hours of operation or employment;*

- *No significant change to stormwater management strategy or provision of utility services except for a change in substation location within the site;*
- *Parking provision remains the same and the number of parking spaces continues to comply with Housing SEPP.*
- *Site access and internal road layout has not changed.*

The general external design of Buildings A and B has not significantly altered from the approved design and from the completed Buildings C, D and E. Architectural design features are maintained and the facade is consistent with the approved design and the completed buildings.

It is considered that the development as modified retains the essential features of the original approved development and is not different to any material extent. The modifications would result in similar impacts to the development as originally approved and the findings of the Statement of Environmental Effects accompanying the application and the officer's assessment of the development application would apply equally to the development as modified as to the development as originally approved.

When viewed in the context of the original approved development of a residential care facility and five independent unit buildings and in the context of the nature of the use and built form as originally approved. The proposed modification is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified.

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

The original development application was integrated development requiring General Terms of Approval from the RFS. The modified proposal requests the deletion of conditions 81 to 85 relating to bushfire protection imposed in accordance with the general terms of approval, as the site is no longer identified as bushfire prone.

The modification was referred the RFS for comment. No objections were raised to the deletion of these conditions and the RFS confirmed that the previous general terms of approval are no longer applicable.

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

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

the modified proposal was publicly exhibited, and no submissions were received.

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

The modification application was notified between 12 August 2024 and 2 September 2024, no submissions were received.

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

The matters required to be considered include:

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

Reasons for Grant of Consent

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

1. *The proposed development will add to the supply of housing for seniors and people with a disability within the North Metropolitan Subregion and the Hornsby local government area in a location with ready transport access to the services and amenities available within Hornsby Town Centre.*
2. *The proposed development adequately satisfies the relevant State Environmental Planning Policies including SEPP (Housing for Seniors and People with a Disability), SEPP 65 (Design Quality of Residential Flat Development) and its associated Residential Flat Design Code, SEPP 55 Remediation of Land and SEPP (Infrastructure) 2007.*
3. *The proposal adequately satisfies the applicable provisions and objectives of Hornsby LEP 2013. In this regard the Panel notes that a number of provisions contained in the Seniors Housing SEPP prevail over those contained in the HELP.*
4. *The proposed development is considered to be of appropriate scale and form for this locality noting that the site and adjoining premises have been used for many years as aged and disability care centre.*
5. *The proposed development, subject to the conditions imposed, will have no unacceptable adverse impacts on the natural or built environments including the remnant bushland species and heritage valued on site trees, overland flow patterns, the amenity of nearby residential premises, or the operation of the local road system.*
6. *In consideration of conclusions 1-5 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.*

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

3.2 Section 4.15(1) of the 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 4.55(3), which are of relevance to the application.

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

- (a) the provisions of—
- (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iv) (iia) 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
 - (v) 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.

3.3.1 Environmental planning instruments (s4.15(1)(a)(i))

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Sustainable Buildings) 2022
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- 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 5 and considered in more detail below.

Table 5: Summary of Applicable State Environmental Planning Policies (Preconditions in bold)

EPI	Matters for Consideration	Comply (Y/N)
SEPP (Biodiversity & Conservation)	Chapter 2: Vegetation in non-rural areas Chapter 6: Water Catchments	Y

BASIX SEPP	BASIX Certificate supplied for a total of 79 ILU's within Buildings A and B. No compliance issues identified, subject to imposition of conditions.	Y
SEPP (Housing)	Chapter 3: Diverse Housing Housing for Seniors and people with a disability Chapter 4: Design of residential apartment development	Y
SEPP (Planning Systems)	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 below.	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land • Section 4.6 - the proposed modification would not alter the development's compliance with Chapter 4 of SEPP (Resilience and Hazards).	Y
SEPP (Transport and Infrastructure)	Chapter 2: Infrastructure • Section 2.119 and 2.122 - The development was not required to be referred to TfNSW as the modified proposal would not alter the approved vehicular access points from the Pacific Highway and the modification would not increase the number of units on the site.	Y
LEP	<ul style="list-style-type: none"> • Clause 2.3 - Permissibility and zone objectives • Clause 4.3 - Height of Buildings - discussed in Section 3.3.8 • Clause 5.10 - Heritage Conservation - no change to previous assessment • Clause 6.2 - Earthworks • Clause 6.4 - Terrestrial Biodiversity • Clause 6.8 - Design Excellence - discussed in Section 3.3.8 below 	Y
DCP	The proposed development would not alter the development compliance with the relevant Parts of Chapters 1, 7 or 9 of the HDCP.	Y

3.3.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of chapter 2 and 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Chapter 2 Vegetation in Non-Rural Areas

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

Part 2.3 of the policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1.2.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

It is noted that the modified proposal would not result in additional tree removal.

Chapter 6 Water Catchments

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 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.

3.3.3 State Environmental Planning Policy (Sustainable Buildings) 2022

The application has been assessed against the requirements of chapter 2 of State Environmental Planning Policy (Sustainable Buildings) 2022 which seeks to encourage the design and delivery of more sustainable buildings.

The application is accompanied by an amended BASIX Certificate No.1272554M_07 prepared by Aspire Sustainability Consulting dated 12 August 2024 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

3.3.4 State Environmental Planning Policy (Housing) 2021

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

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

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

SEPP HS&PD defined self-contained dwellings as:

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

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

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

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

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

The application proposes to increase in the height of each floor by one metre. The minor increase in floor levels of Buildings A and B is consistent with the design intent of the original approval with taller buildings along the Pacific Highway (noting that the increase in building height is minor and compensated by changes to the gradient of roof elements and removal of stair access to roof).

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

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

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

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

Clause 91 - Fire sprinkler systems in residential care facilities

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

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

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

Clause 95 - Water and Sewer

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

Clause 96 - Bush fire prone land

A portion of the site was previously identified as bush fire prone land and the NSW RFS provided General Terms of Approval during the assessment of the original application. The site is no longer identified as bushfire prone. Therefore, the deletion of the bushfire conditions No. 81-85 is proposed. The modification application was referred to the RFS for comment. No objections were raised to the modified development in this regard and the NSW RFS conditions are no longer applicable.

97 Design of seniors housing

Clause 97 of the Housing SEPP states the following:

- (1) *In determining a development application for development for the purposes of seniors housing, a consent authority must consider the Seniors Housing Design Guide, published by the Department in December 2023.*
- (2) *Development consent must not be granted to development for the purposes of seniors housing unless the consent authority is satisfied the design of the seniors housing demonstrates that adequate consideration has been given to the design principles for seniors housing set out in Schedule 8.*

In regard to Clause 97(1), the development has been assessed against the relevant requirements of the Seniors Housing Design Guide ('SHDG'), published by the Department in December 2023.

A brief summary of the assessment is provided in the Table 6 below:

Table 6: Seniors Housing Design Guide Clause 97(1) Guidance Chapters

Proposal	Requirement	Comply (Y/N)
<i>Designing for Country</i>		
The development generally complies with Compliance with Connecting with Country (GANSW, 2023).	Compliance with Connecting with Country (GANSW, 2023)	Y
<i>Care for the Planet</i>		
The development application is supported by an amended BASIX certificate meeting the requirements of SEPP (Sustainable Buildings) 2022	Ensure the development meets the sustainability requirements.	Y
<i>Site Analysis - Environmental Response</i>		
The development proposal is supported by consultant reports including landscape, stormwater, arboricultural, traffic and acoustic consultants who have directed the design of the built form.	Engage consultants to ensure the site is capable of accommodating the Seniors Living and the development has been designed to conform to the site.	Y
<i>Site Analysis - Urban Response</i>		
The modified development demonstrates design excellence and is considered acceptable as discussed in Section 3.3.8 of this report.	Provide design excellence that inspires and is proudly integrated with the local neighbourhood.	Y
<i>Heritage</i>		

As discussed in Section 3.3.8 of this report, the development has satisfactorily addressed Clause 5.10 Heritage Conservation of the HDCP.		Address the heritage requirements of the locality.	Y
Care, Wellbeing and Community			
The development has been designed to allow for adequate cross ventilation, sunlight access and fresh air with the private open space being located outside on balconies and decks. .		6.1.6 Design buildings that promote health and have good cross ventilation, access to sunlight and fresh air.	Y
Design for physical aging and dementia			
The development has been appropriately designed for ageing residents and residents with dementia. Appropriate conditions of consent have been imposed.		7.1.2 Design for safety from falling with: <ul style="list-style-type: none"> • Slip-resistant, level floor surfaces with particular attention to exterior door thresholds and junctions where flooring material changes. • Good colour and/or tonal contrast around doors to clearly delineate the openings. • Use of single colours for surfaces. Avoid heavily contrasted patterned surfaces. • Considered lighting to manage changes in lighting ambiance and intensity, to minimise deep shadows and provide a variety of light sources. 	y
Design Principles for Independent Living for High Density			
Neighbourhood Amenity and Streetscape	The development as modified remains compatible with the character of the surrounding area in terms of use and level of activity. Established trees along the Pacific Highway frontage will obscure the building's visibility.	16.1.3 The design should enhance the streetscape and proudly integrate into the existing context. 16.1.4 Provide a development that embodies design excellence to uplift the future attributes of the local area. 16.1.5 Introduce new landscaping and shade trees.	Y
Solar Access and Design for Climate	All proposed units comply with the solar access requirements and all units	Healthy independent living communities are formed between residents who are	Y

	have access to communal open space.	<p>able to share a communal environment outside of their own private space.</p> <p>A common outdoor terrace provides an alternative aspect from resident's own independent living unit. A shared naturally ventilated drying area reduces reliance on mechanical driers and brings people together.</p> <p>Clusters of independent living units on each level enable social cohesiveness and manage corridor distances from the lifts. Maximum daylight accessed in corridors from shared terraces reduces the need for artificial lighting.</p>	
Stormwater	An amended Stormwater Management Plan prepared by Egis Group has been submitted as part of the application addressing stormwater management on the site.	<p>16.3.3 Provide opportunities to increase the catchment and/or absorption of stormwater with systems such as vegetated swales, sediment basins, detention pits and porous landscape paving.</p> <p>16.3.4 Maximise areas for deep soil landscape so that plants can mature into dense stormwater catchment areas and absorb ground water</p>	Y
Crime Prevention	The development has been designed to allow for passive surveillance.	<p>16.4.4 Facilitate opportunities for casual passive surveillance in multistorey independent living buildings with views from balcony O+ to public areas below.</p> <p>16.4.5 Provide well-lit pathways, thresholds and transitions between inside and outside and at property boundaries.</p> <p>16.4.6 Install movement sensor lighting.</p>	Y
Accessibility	As detailed in the accessibility report submitted, the modified proposal would comply with the accessibility requirements of the Housing SEPP.	16.5.2 Arrange independent living units on each floor with clear sightlines to and from lifts. Manage corridor lengths and cluster groups of units around a common core. Number of units which are accessed by each lift core may need to suit the provision of care and serviceability for staff and carers. Lifts need to be sized to accommodate mobility equipment and also ambulance stretcher. Articulate corridors with indents at unit thresholds to	Y

		<p>allow residents to personalise their own entries and for wheelchairs and walkers to park.</p> <p>The accessibility requirements for seniors housing are set out in Schedule 4 of the SEPP (Housing) 2021 and in the National Construction Code.</p>	
Waste Management	The development provides sufficient waste management and appropriate conditions are recommended.	<p>16.6.4 Provide appropriately sized disposal points that can accommodate bins for the various waste types including recyclables.</p> <p>16.6.5 Ensure that waste collection points are safely located away from resident areas, are covered and easily accessible</p>	Y
Basement Access and Car Park	The basement would have secure access and pedestrian access.	16.8.2 Ease of entry should be supported with a level stopping point for access to intercom and secure access at the security threshold. Clear sightlines are required or separate driveways for each direction. Paths for pedestrian access to and from basement carpark must provide safe access away from vehicle movements.	Y
Open Space and landscape	Sufficient open space and landscaping has been provided.	16.9.2 Stagger and articulate setback distances and maximise setbacks for meaningful use, including to utilise deep soil for mature shade trees to establish and flourish.	Y

In regard to Clause 97(2), a detailed assessment is provided in Table 7 below:

Table 7: Schedule 8 - Design Principles for Seniors Housing (Clause 97(2))

Control	Requirement	Comply (Y/N)
1 Neighbourhood amenity and streetscape		
Vegetation along the southern boundary provides a buffer between the development and adjoining development to the south.	<p>Seniors housing should be designed as follows—</p> <p>(a) to recognise the operational, functional and economic requirements of residential care facilities, which typically require a</p>	Y

<p>The development as modified is acceptable with respect to neighbourhood amenity and streetscape.</p> <p>The development complies with the sunlight access impacts to adjoining properties.</p> <p>The development proposes appropriate setback to boundaries to ensure adjoining buildings are not impacted.</p>	<p>different building shape from other residential accommodation,</p> <p>(b) to recognise the desirable elements of—</p> <p>(i) the location's current character, or</p> <p>(ii) for precincts undergoing a transition—the future character of the location so new buildings contribute to the quality and identity of the area,</p> <p>(c) to complement heritage conservation areas and heritage items in the area,</p> <p>(d) to maintain reasonable neighbourhood amenity and appropriate residential character by—</p> <p>(i) providing building setbacks to reduce bulk and overshadowing, and</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and</p> <p>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours,</p> <p>(e) to set back the front building on the site generally in line with the existing building line,</p> <p>(f) to include plants reasonably similar to other plants in the street,</p> <p>(g) to retain, wherever reasonable, significant trees,</p> <p>(h) to prevent the construction of a building in a riparian zone.</p>	
2 Visual and Acoustic Privacy		
<p>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.</p>	<p>Seniors housing should be designed to consider the visual and acoustic privacy of adjacent neighbours and all residents of the seniors housing by—</p> <p>(a) using appropriate site planning, including considering the location and design of windows and balconies, the use of screening devices and landscaping, and</p>	Y
<p>Acceptable setback distances have been provided between bedrooms and driveways, parking areas and paths.</p> <p>Conditions of consent have been</p>	<p>b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>	Y

recommended regarding Road Traffic Noise.		
3 Solar Access and Design For Climate		
100% for the proposed units comply with the sunlight access requirements of the Housing SEPP.	The design of seniors housing should— (a) for development involving the erection of a new building—provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and	Y
The proposal has been designed to maximize solar access to internal living areas and private open space of each dwelling.	involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	Y
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 and drainage pits and pipes. Council's engineering assessment confirms the modified proposal maintains consistency with the approved stormwater management strategy for the site and is acceptable	The design of seniors housing should aim to— (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and	Y
OSD provided within the proposed stormwater plan.	b) include, where practical, on-site stormwater detention or re-use for second quality water uses.	Y
5 Crime Prevention		
The unit buildings are oriented to provide passive surveillance over common areas. The development includes overhead and low level lighting to pathways and building entrances. Conditions applied to the original consent are relevant to the modified proposal and include a requirement for security measures for unit buildings and basement areas and for external lighting to be installed.	Seniors housing should— (a) be designed in accordance with environmental design principles relating to crime prevention, and (b) provide personal property security for residents and visitors, and (c) encourage crime prevention by— (i) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins the area, driveway or street, and (ii) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and	Y

	(iii) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	
6 Accessibility		
The modified proposal includes a revised access report which demonstrates accessibility requirements can be satisfied.	Seniors housing should— (a) have obvious and safe pedestrian links from the site that provide access to transport services or local facilities, and (b) provide safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	Y
7 Waste Management		
An amended Waste Management Plan was submitted with the application to reflect the proposed changes to Buildings A and B. Conditions have been modified to reflect these changes and proposed waste management (during construction and ongoing) on the site is considered acceptable in this regard.	Seniors housing should include waste facilities that maximise recycling by the provision of appropriate facilities.	Y

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

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

The Housing SEPP includes non-discretionary development standards whereby compliance cannot be used to refuse development consent. Table 8 sets out the modified proposal's compliance with these standards:

Table 8: Non-discretionary standards for ILUs

Clause	Control	Requirement	Approved (under DA/394/2015/E)	Proposal	Comply (Y/N)
108(2)(a)	Building Height	9.5m	6 storeys (building A & B)	6 storeys (building A & B)	N
108(2)(c)	Density and Scale	0.5:1	1.11:1	1:12:1	N
108(2)(d)	Landscaped Area	35m	33.8m ²	Unchanged	N/A
108(2)(f)	Deep Soil %	>15%	25%	Unchanged	N/A
108(2)(g)	Solar Access (min 2hrs b/w 9am & 3pm)	70%	73.4%	77%	Y
108(2)(h)	POS	15m ² Ground	>15m ² ground	>15m ² ground	Y

108(2)(i)	Balcony Area (1st floor and above)	10m ²	>10m ²	>10m ²	Y
108(2)(j)	Car Parking (1 per 5 dwellings)	34 spaces	197 spaces (within basements)	Unchanged	N/A

The provisions of Clause 108 are not development standards that can be used to refuse development consent for ILUs. The issues of building height and density are discussed within Section 3.3.8 of this report.

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

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

24 Site compatibility certificates required for certain development applications:

(1) *This clause applies to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing (other than dual occupancy) if—*

(a) *the development is proposed to be carried out on any of the following land to which this Policy applies—*

(i) *land that adjoins land zoned primarily for urban purposes,*

(ii) *land that is within a zone that is identified as “special uses” under another environmental planning instrument (other than land on which development for the purposes of hospitals is permitted),*

(iii) *land that is used for the purposes of an existing registered club, or*

(b) *the development application involves buildings having a floor space ratio that would require the consent authority to grant consent under clause 45.*

(1A) *Despite subclause (1), this clause does not apply to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing if the proposed development is permissible with consent on the land concerned under the zoning of another environmental planning instrument.*

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

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

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

The proposed modification is acceptable with respect to the natural environment. The site is no longer considered bushfire prone land. With respect to the flooding constraint, this matter has been addressed

in the original application and drainage works have been completed on the site as part of Stage 1, to contain the overland flow path in the event of a flood.

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

The bulk, scale and character of the development is appropriate given the current and approved use of the site and the adjoining development. The proposed change in height of buildings A and B would not significantly alter on the visual impact of the development on the Pacific Highway and adjoining properties due to the recessed design and existing/proposed vegetation which softens the appearance of the development. The proposed modification is acceptable with respect to the site suitability criteria of this clause. The development would be compliant with the relevant requirements of the Housing SEPP and is considered acceptable.

Chapter 4 Design of residential apartment development

Chapter 4 of State Environmental Planning Policy (Housing) 2021 (previously SEPP 65) applies to residential flat buildings comprising three or more storeys and four or more dwelling units. It is considered that the proposed development is consistent with the aims and objectives of Chapter 4.

A design verification statement was provided in the original application and satisfactory addressed the provisions of SEPP 65. A revised statement verification statement, prepared by Group GSA has been provided to address the modified built form. The submitted Statement contains comments responding to each of the Design Quality Principles and concludes by stating that the development as modified generally meets the objectives and intent of the design quality principles set out in Part 2 of Chapter 4.

An assessment of the proposal against the design quality principles contained within Schedule 9 of the Housing SEPP and the submitted design verification statement are addressed in Table 9 below:

Table 9: Housing SEPP - Schedule 9 Assessment

Principle	Compliance
1. CONTEXT AND NEIGHBOURHOOD CHARACTER	Yes
Comment: The site is located within an area zoned for residential flat buildings in close proximity to Waitara Railway Station. The proposal responds to the desired future character of the precinct as envisaged by Council for residential flat buildings in landscaped settings with underground car parking. The proposed modification would achieve a development which is considered suitable with respect to the site context and neighbourhood character.	
2. BUILT FORM AND SCALE	Yes
Comment: The modified proposal would not significantly increase the perceived bulk and scale of the approved development. Buildings A and B would be screened by established and proposed vegetation along the Pacific Highway frontage. The scale of the development is commensurate with that of the adjoining and nearby development. The development achieves a scale consistent with the desired outcome for well-articulated buildings that are set back to incorporate landscaping, open space and separation between buildings. 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.	

3. DENSITY	Yes
<p>Comment: The proposed modification involves design changes to the unit buildings and would increase the proportion of three-bedroom units. No increase in the approved number of units is proposed.</p> <p>The modified proposal is sustainable as it responds to the regional context, availability of infrastructure, public transport, community facilities and environmental quality and is acceptable in terms of density.</p>	
4. SUSTAINABILITY	Yes
<p>Comment: The applicant has submitted a BASIX Certificate for the amended development. In achieving the required BASIX targets for sustainable water use, thermal comfort and energy efficiency, the proposed development would achieve efficient use of natural resources, energy and water throughout its full life cycle, including demolition and construction.</p>	
5. LANDSCAPE	Yes
<p>Comment: The building footprint and provision of car parking under the buildings allows for increased landscaping, in particular deep soil planting. The proposed landscape scheme incorporates the existing trees and provides screening.</p>	
6. AMENITY	Yes
<p>Comment: The amended proposal contains units designed with appropriate room dimensions and layout to maximise amenity for future residents. The proposal incorporates good design in terms of achieving natural ventilation, solar access and acoustic privacy. All buildings incorporate accessible design, access to balconies is provided from living areas and privacy has been achieved through appropriate design and orientation of balconies and living areas.</p> <p>Storage areas have been provided within each unit and in the basement levels. The proposal would provide convenient and safe access via a central lift connecting the basement and all other levels.</p>	
7. SAFETY AND SECURITY	Yes
<p>Comment: The modified proposal would not alter the compliance of the original proposal with regard to the principle of safety.</p> <p>The design orientates the balconies and windows of individual apartments towards the street, rear and side boundaries, providing passive surveillance of the public domain and communal open space areas. The pedestrian and vehicular entry points are secured and visibly prominent. Condition No. 69 was applied to the consent for safety and security measures to be installed in the unit buildings and this condition is relevant to the modified proposal.</p>	
8. SOCIAL DIMENSIONS AND HOUSING AFFORDABILITY	Yes
<p>Comment:</p> <p>The development responds to the social context in terms of providing a range of dwelling sizes with good access to social facilities and services. The development comprises a range of facilities including a café, swimming pool and communal areas to provide opportunities for social interaction among residents</p>	

9. AESTHETICS	Yes
Comment: The proposed modification would not alter the approved external design, architecture, 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.	

Apartment Design Guide

At the time of the assessment of the original application, SEPP 65 also required consideration of the Residential Flat Design Code. SEPP 65 was amended 19 June 2015 and principally has the effect of replacing the Residential Flat Design Code (RFDC) with the Apartment Design Guide (ADG) amongst other amendments to the operation of the SEPP. Table 10 sets out the proposal's compliance with the ADG:

Table 10: Apartment Design Guide

Control	Proposal	Requirement	Comply (Y/N)
Communal Open Space (3D-1)	>25%	25% of site area	Y
Solar Access (Communal open space areas) (3D-1)	>50%	50% direct sunlight access for 2 hours	Y
Deep Soil Zone (3E-1)	>15%	15% of site area	Y
Building Separation (3F-1)			
- Ground - Level 3 (A-B)	8.75m	12m between habitable windows and balconies. 6m to non-habitable	N
- Level 4-Level 5 (A-B)	8.75m	18m between habitable windows and balconies. 9m to non-habitable	N
- Ground - Level 3 (B-C)	12m	12m between habitable windows and balconies. 6m to non-habitable	Y
- Level 4- Level 5 (B-C)	13-18m	18m between habitable windows and balconies. 9m to non-habitable	Y
Car Parking (3J-1)	105 spaces	95 spaces	Y
Solar Access (4A-1)			
- Living rooms	77% - 61/79	2 hours for 70%	Y
- Private open space	77% - 61/79	2 hours for 70%	Y

No Solar Access allowable for units (4A-1)	0% of units	15% of units (max)	Y
Natural Cross Ventilation (4B-3)	60%	60%	Y
Ceiling Height (4C-1)	3.2m	2.7m for habitable rooms 2.4 for non-habitable rooms	Y
Minimum Dwelling Size (4D-1)			
- 2 bed units	>70m ²	70m ²	Y
- 3 bed units	>90m ²	90m ²	Y
Minimum Window Size (4D-1)	>10%	10% of floor area of the room	Y
Habitable Room Depth (4D-2)	9m	8m from a window (max for open plan) or 2.5x ceiling height	N
Apartment Layouts - Minimum Bedroom Size (4D-3)			
- Master bedroom	>10m ²	min 10m ²	Y
- Other bedrooms	>9m ²	min 9m ²	Y
Apartment Layouts - Combined Living / Dining Rooms Minimum Width (4D-3)			
- 2/3 bed units	4m	4m	Y
Apartment Layouts - Cross Through Apartments (4D-3)	>4m	min 4m width	Y
Minimum Balcony Size (4E-1)			
- 2 bed units	>10m ²	10m ² / 2m depth	Y
- 3 bed units	>12m ²	12m ² / 2m depth	Y
Maximum Number of Units on a Single Level (4F-1)	7	8 units off a circulation core	Y
Storage (4G-1)			
- 2 bed units	>8m ³	8m ³	Y
- 3+ bed units	>10m ³	10m ³	Y
- % located within unit	50%	50%	Y

The habitable room depth and building separation non-compliances outlined above are consistent with the original approval.

- All units offer an open layout with natural ventilation and accordingly, the minor non-compliance is acceptable with respect to residential amenity.
- The amended proposal is similar in built form and design to the approved development and is acceptable with respect to visual privacy between buildings.

3.3.5 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.

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

3.3.7 State Environmental Planning Policy (Transport and Infrastructure) 2021

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

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

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

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

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

3.3.8 Hornsby Local Environmental Plan 2013

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

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

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

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

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

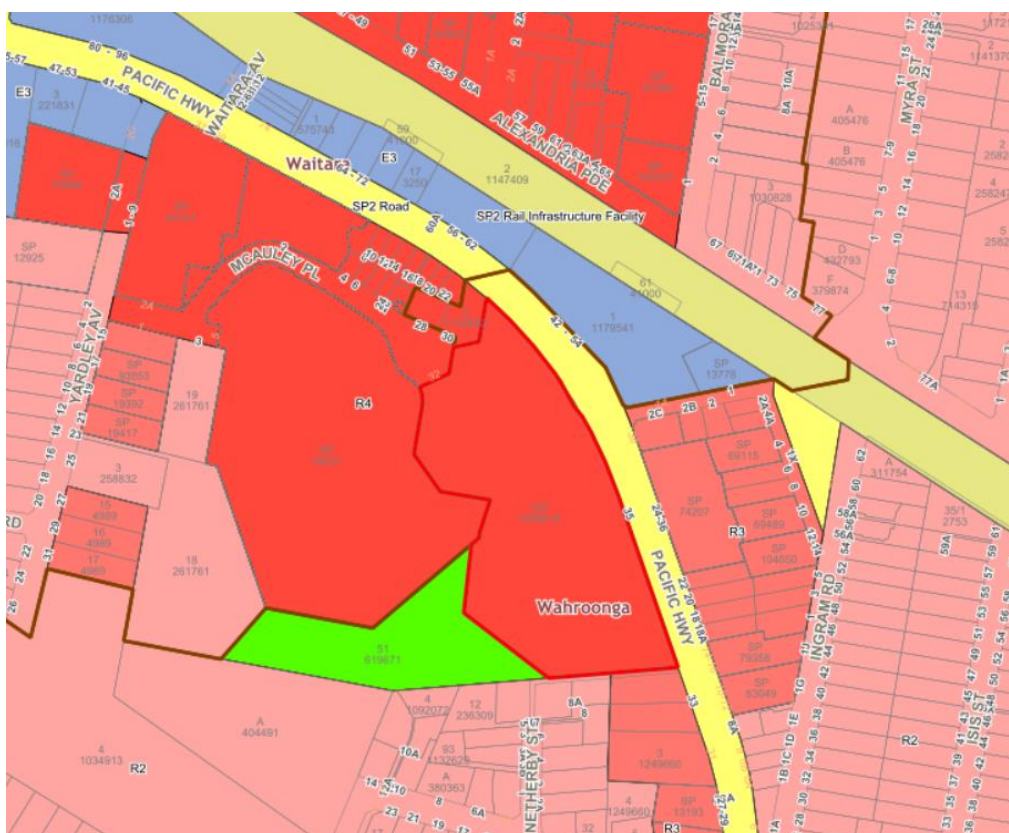


Figure 6: Land Zoning Map

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

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

Height of Buildings

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

Heritage conservation

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

The trees of heritage value included cultural plantings and remnant Blue Gum trees and trees forming part of the Blue Gum High Forest (BGHF) which are primarily located along the property boundaries. The assessment of trees on and immediately adjacent to the site identified 78 trees of high BGHF heritage significance, 22 trees of low to moderate BGHF heritage significance and 4 ornamental plantings of cultural significance.

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

The proposed modification has been designed to avoid the removal of any additional trees of heritage significance from the site. The modifications do not have any additional impact on trees from those already approved. Conditions applied to the original consent require an Arborist to monitor the works and ensure compliance with Australian Standards to mitigate any adverse impacts on significant trees.

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

Earthworks

Clause 6.2 of the HLEP states that consent is required for proposed earthworks on site. The modifications result in less basement excavation with less excess excavated material to be removed from site. Conditions were applied to the original consent for sediment and erosion controls, excavation, landfill and environmental management. Subject to the original conditions applied, the proposed modification is acceptable with respect earthworks.

Terrestrial Biodiversity

Clause 6.4 of the HLEP applies to land identified as is mapped as 'biodiversity' on the Terrestrial Biodiversity Map. A portion of the site (where) is mapped as 'biodiversity' on the Terrestrial Biodiversity Map. Consideration as to whether the development is likely to have an adverse impact on the condition, ecological value and significance of the flora and fauna of the land. The proposal as modified has been designed and sited to avoid any significant adverse environmental impact. Conditions applied to the original consent are applicable to the modified proposal and would ensure the protection of flora and fauna on the site.

Design Excellence

Clause 6.8 of the HLEP provides considerations for the delivery of the highest standard of architectural and urban design. The modification application proposes minor external changes and was not required to be reviewed by Councils Design Excellence Panel (DEP).

Advice was received from the DEP during the original assessment and previous modification DA/394/2015/E.

It is noted that the building footprint of Buildings A and B and external appearance, design and architecture of the buildings would remain generally the same. The pitch of the roof elements has been reduced to reduce bulk and scale.

The modified proposal would not involve changes to the building footprint or design and would continue to address the design excellence panels advice.

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

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

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

The following Development Control Plan is relevant to this application:

- Hornsby Development Control Plan 2024 ('the DCP')

The DCP applies to all land within Hornsby Shire and came into effect on 14 August 2024. As discussed in Section 3.3.8 of this report, Seniors Housing is prohibited within the RU4 zone pursuant to LEP and therefore the built form controls within Part 3 of the DCP are not applicable. However, the relevant general provisions within Part 1 and 9 of the DCP are applicable to the development. This includes provisions relating to heritage conservation areas, stormwater management, waste management, tree and vegetation protection, biodiversity and earthworks. These matters are considered throughout this report.

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

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

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

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

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

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

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

If demolition of a building proposed - provisions of AS2601. These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

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

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

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

3.8.1 Context and setting

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

3.8.2 Access and traffic

The modified development would increase traffic generation around or through the site, as detailed in the supplied Traffic Impact Assessment prepared by Stantec. Access to the site has not been modified by the proposed development.

3.8.3 Public Domain

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

3.8.4 Utilities

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

3.8.5 Heritage

Refer to heritage discussion under 3.3.8.2 of this report.

3.8.6 Other land resources

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

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

3.8.7 Flora and fauna impacts

The modification would not have any additional impact on flora and fauna than that approved under the original consent.

3.8.8 Natural environment

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

3.8.9 Noise and vibration

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

3.8.10 Natural hazards

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

The original development application was integrated development requiring General Terms of Approval from the NSW Rural Fire Service (RFS). The modified proposal was referred the RFS for comment as the site is no longer identified as bushfire prone land and the modification would involve the deletion of bushfire conditions of consent. No objections were raised to the modified development in this regard and the NSW RFS raised no concerns to the deletion of the conditions from the consent.

3.8.11 Safety, security and crime prevention

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

3.8.12 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. Addition of further population in a well serviced area is also a positive economic factor.

3.8.13 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.

3.8.14 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.

3.8.15 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. The applicant has provided an initial CTMP which has been assessed by Council. No objections are raised to the initial CTMP document.

3.8.16 Cumulative impacts

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

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

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

3.9.1 Flooding

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

3.9.2 Bushfire

The original development application was integrated development requiring General Terms of Approval from the NSW Rural Fire Service (RFS). The modified proposal was referred the RFS for comment as the site is no longer identified as bushfire prone land and the modification would involve the deletion of bushfire conditions of consent. No objections were raised to the modified development in this regard and the NSW RFS raised no concerns to the deletion of the conditions from the consent.

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

These submissions are considered in Section 4.3 of this report.

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

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

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

3.12 Part 5 of the 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 11 below.

Table 11: Consideration of the Requirements under the Regulation

Matter	Comment	Comply (Y/N)
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by the owner of the land being Catholic Healthcare Limited.	Y

NSW Aboriginal Land Council consent required for land owned by 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 4.55(2) to modify the approved development and is not to correct a minor error, misdescription or miscalculation.	Y
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification given there are no significant changes to the external building form or features. The modified proposal would not significantly increase the perceived bulk and scale of the approved development. Any other impacts were considered in the original proposal, which was supported by Council.	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	N/A	N/A
Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Y

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

4 REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The Section 4.55(2) modification application was referred to the RFS. The original development application was integrated development requiring General Terms of Approval from the RFS. The modified proposal proposed the deletion of conditions 81 to 85 relating to bushfire protection imposed in accordance with the general terms of approval, as the site is no longer identified as bushfire prone.

No objections were raised to the deletion of these conditions and the RFS confirmed that the previous general terms of approval are no longer applicable.

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

Table 12: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Transport for NSW	S2.119 of the <i>SEPP (Transport and Infrastructure)</i>	N/A	N/A
Integrated Development (s4.46 of the EP&A Act)			
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	No concerns raised to the deletion of all bushfire conditions No. 81-85	Y

4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined Table 9. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 13: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted amended stormwater management plans and considered that there were no objections. On-site Stormwater Detention and Water Quality/Bio Retention System conditions have been amended accordingly.	Y
Traffic	Council's Traffic Engineering Officer reviewed the proposal and raised no concerns in relation to traffic generation and car parking.	Y
Building	Comments received; no concerns raised to the modified proposal.	Y
Waste	Comments received; no further concerns, subject to updated conditions to reflect the modified development.	Y

4.3 Notification and Community Consultation

The modification application was notified in accordance with the Council's Community Engagement Plan from 12 August 2024 until 2 September 2024. The notification included the following:

- A sign placed on the site.
- Notification letters sent to adjoining and adjacent properties (approx. 30 letters sent).

- Notification on the Council's website.

The Council did not receive any unique submissions.

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 Building Height, Bulk and Scale

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

The modification application includes changes to Buildings A and B including a reduction in basement levels and an increase in the height of each floor by one metre. Whilst the number of units has not increased, an increase in 3-bedroom units is proposed to cater for increased market demand in this regard. The changes are contained generally within the same building footprint to the current approved development.

The proposed buildings provide consistency of building bulk, height and scale across the precinct with the bulk and scale is still aligned with development as approved. The height of buildings proposed along the highway frontage remains generally below the height of the tree canopy when viewed from the highway which will continue to screen the emerging built form. The proposed development would have no significant adverse impacts on the character of the locality.

The additional height of the proposed ILU buildings would not have any adverse environmental impact on surrounding development in terms of view loss, privacy or overshadowing and the proposed changes are considered acceptable in this regard.

6 CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

The application proposes a Section 4.55(2) modification to an approved seniors living development including amendments to Independent Living Units within Buildings A and B associated with Stage 3, resulting in a reconfigured basement, increase in floor to ceiling heights, changes to apartment layouts and number of bedrooms, minor increase in GFA, changes to communal facilities and changes to roof elements.

No submissions were received during the public exhibition period.

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

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

7 RECOMMENDATION

It is recommended that:

- The Modification Application No. DA/394/2015/F for modification to Independent Living Units - Buildings A and B - Stage 3 of the approved seniors living development at Lot 100 DP 1259619, No. 35 Pacific Highway, Wahroonga be approved by the Sydney North Planning Panel pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, subject to the draft conditions of consent attached to this report at Attachment A; and
- Pursuant to Clause 118 of the Environmental Planning and Assessment Regulation 2021, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

- Attachment A: Draft Conditions of Consent
- Attachment B: Architectural Plans