



## COUNCIL ASSESSMENT REPORT - MODIFICATION APPLICATION

### SYDNEY NORTH PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSNH-547- DA/1024/2021/B
<b>PROPOSAL</b>	<p>Section 4.55(2) modification to:</p> <ul style="list-style-type: none"> <li>• Enable staging of construction in five stages.</li> <li>• The construction of a temporary road for construction purposes.</li> <li>• Slightly modify the alignment of the Stage 1 drainage lines.</li> <li>• Slightly modify the external facades of several approved buildings to provide for louvred vents</li> <li>• Mechanical ventilation to the residential apartments; and</li> <li>• Modify the architectural drawings to show the modified extent of rooftop photovoltaic panels.</li> </ul>
<b>ADDRESS</b>	284 Castle Hill Road, 411-415 Old Northern Road and 417-419 Old Northern Road, Castle Hill (works primarily undertaken within Lot 1 DP 654242, Lot 1 DP 177433 and Lot 2005 DP 1088072)
<b>APPLICANT</b>	Anglican Community Services
<b>OWNER</b>	Anglican Retirement Villages (Diocese of Sydney)
<b>MOD LODGEMENT DATE</b>	11 October 2024
<b>ORIGINAL DA DETERMINATION DATE</b>	19 September 2022
<b>APPLICATION TYPE</b>	Modification Application under Section 4.55(2) of the EP&A Act 1979
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 3, <i>Schedule 7 of State Environmental Planning Policy (Planning Systems) 2021: General development over \$30 million.</i>
<b>CIV</b>	\$81,995,000 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Nil
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy No. 55 Remediation of Land</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Building</li> <li>• State Environmental Planning Policy (Housing for Seniors</li> </ul>

	or People with a Disability) 2004 <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>• Hornsby Local Environmental Plan 2013</li> </ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	Nil
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<ul style="list-style-type: none"> <li>• Architectural Plans</li> <li>• Staging Plan</li> <li>• Landscape Plan</li> <li>• Civil Engineering Plans</li> <li>• Noise Impact Assessment</li> <li>• BASIX Certificate x 2</li> <li>• Arboricultural Impact Assessment</li> <li>• Addendum to Arboricultural Impact Assessment</li> <li>• Detailed Site Investigation</li> <li>• Remediation Construction Traffic Management Plan</li> <li>• Remediation Action Plan</li> <li>• Asbestos Management Plan</li> <li>• Conservation Management Plan</li> <li>• Geotechnical Investigation and Waste Classification</li> <li>• Flora and Fauna Assessment</li> <li>• Construction Management Plan</li> <li>• Construction Traffic Management Plan</li> <li>• BCA Assessment Report</li> <li>• Air Quality Assessment</li> <li>• Statement of Compliance - Access for People with a Disability</li> <li>• Waste Management Plan x 2</li> <li>• Stormwater Management Report</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)</b>	N/A
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	12 March 2025
<b>PLAN VERSION</b>	Architectural Plan Set Issue 2 dated 12/09/2024
<b>PREPARED BY</b>	Katrina Maxwell, Senior Town Planner
<b>COI DECLARATION</b>	No conflict of interest declared
<b>DATE OF REPORT</b>	26 February 2025

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## EXECUTIVE SUMMARY

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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 amendments to a consent granted under DA/1024/2021 approved by the Panel on 19 September 2022.

The original consent approved a Seniors housing development including: demolition; remediation, site excavation and earthworks; removal of trees and vegetation; construction of 3x three storey residential flat buildings, 13x single storey detached and semi-detached dwellings, 1x two-storey administrative building and 1x single storey community building with self-serve cafe (a total of 66 dwellings are proposed); upgrades to the existing road network; carparking; associated infrastructure to support the development; and landscaping at 284 Castle Hill Road, 411-415 Old Northern Road and 417-419 Old Northern Road, Castle Hill (14 Allotments make up the subject site, although works are primarily undertaken within Lot 1 DP 654242, Lot 1 DP 177433 and Lot 2005 DP 1088072 ('the site')).

The seniors housing development was permissible with consent under State Environmental Planning Policy (Housing for Seniors and People with a Disability) (2004). It is noted that on the 26 November 2021, State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 was repealed and relevant provisions were transferred into State Environmental Planning Policy (Housing) 2021. However, Schedule 7A applied savings provisions stating that the Housing SEPP did not apply to a development application made, but not yet determined on or before the commencement date.

Therefore, the relevant requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 continue to apply to this development application.

A subsequent Section 4.55 (1A) was approved on 31 May 2023 to modify the material palette of approved development and amend various conditions relating to the consent.

### The Site

Within the confines of the site that is subject of this DA includes Kilvinton Village (south of Tom Thumb Lagoon) and Dorothy Mowll Court (along Barker Drive) with areas of open space, Tom Thumb Lagoon and extensive landscaping.

The site contains remnant vegetation consistent with the Blue Gum High Forest vegetation community. This vegetation is located on the corner of Castle Hill Road and Old Northern Road and scattered throughout the extensive landscaping around Tom Thumb Lagoon.

The site is contaminated as a result of historic filling. The site is not bushfire prone. Some minor flooding occurs around Tom Thumb Lagoon.

### This Section 4.55(2) Application

This Section 4.55(2) application seeks to amend the original consent by staging the development, adding solar panels and mechanical ventilation to residential flat buildings, construction of a temporary access road and the slight modification of drainage lines.

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 3 of Schedule 7 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). A condition imposed by the Panel is proposed to be amended as part of this Section 4.55(2) application.

The proposed modification is considered to satisfy the substantially the same development test required by Section 4.55 of the EP&A Act.

The application was placed on public exhibition from 15 October 2024 to 5 November 2024, with nil submissions received.

#### External Referrals

While the original Development Application No. DA/1024/2021 was referred to the Rail Authority and Transport for NSW (TfNSW), the minor amendments proposed under this Section 4.55(2) do not require re-referral to Transport for NSW. The proposed modifications would not impact The General Terms of Approval issued by Transport for NSW as no changes are proposed to Transport of NSW's drainage easement as part of this Section 4.55(2) Application. The proposed amendments do not affect concurrence issued by Transport for NSW as the amended proposal would not contribute to additional traffic generation.

#### Key Issues

The key issues associated with the proposal identified in the original assessment of the development application included:

1. Contamination
2. Clause 4.6 written request - height of buildings in zone where residential flat buildings are not permitted.
3. Deferred Commencement - TfNSW General Terms of Approval

These key issues were satisfactorily resolved as part of the original development assessment. The additional key issues raised in this Section 4.55(2) application include stormwater and tree Preservation.

#### Recommendation

The amended development is considered to be consistent with the public interest as the staging of construction works would minimise disruption to existing residents of the retirement village. The inclusion a temporary road would reduce traffic congestion on Castle Hill Road and Old Northern Road during construction works, particularly traffic congestion created by construction vehicles such as trucks.

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. The draft amended conditions have been provided to the Applicant who supports the proposed amendments to conditions.

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## 1 THE SITE AND LOCALITY

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### 1.1 The Site

Anglicare Castle Hill extends over an area of 43.672 hectares and comprises a number of retirement villages across a large campus. Anglicare Castle Hill is bounded by Castle Hill Road, Old Northern Road and David Road at Castle Hill, encompassing 14 separate land titles and seven different addresses including the following:

- No. 284 Castle Hill Road (Lot 1 DP 177433, Lot B DP 410898, Lot 1 DP 654242, Lot 2 DP 309991, Lot D DP 369584, Lot 10 DP 135926, Lot 2005 DP 1088072, Lot 72 DP 1067989, Lot 73 DP 1067989),
- No. 296 Castle Hill Road (Lot E DP 369584),
- No. 300-302 Castle Hill Road (Lot C DP 369584),
- No. 304 Castle Hill Road (Lot A DP 410898),
- No. 146-200 David Road (Lot 74 DP 1067989),
- No. 411-415 Old Northern Road (Lot 100 DP 1101146), and
- No. 417-419 Old Northern Road (Lot 3 DP 1047222)

Part of the site has been used as a retirement village since 1959. The campus supports a range of independent living units plus a range of residential aged care facilities for residents needing low and high care services. The residents in the independent living units at Anglicare Castle Hill are supported by a 24-hour medical clinic, therapy centre, chapel, library, hairdressers, bowling green, kiosks, community halls, hydrotherapy pool, café, leisure centres, gymnasium, workshops and village bus.

There are no SEPP Seniors consents at Nos. 411-415 and 417-419 Old Northern Road, Castle Hill. Rather, in December 2010, Council approved DA/701/2010 for the erection of a 2-3 storey affordable rental housing development comprising 15 units at Nos. 413-415 Old Northern Road. This development did not proceed. Nos. 411-415 Old Northern Road is currently used as a carpark which is accessed via Clarke Road and Nos. 417-419 contain a dwelling house.

The supplied Statement of Environmental Effects prepared by DFP, provides the following figure outlining the extent of the development area, with reference to the “overall site”. It is noted that Figure 1 below considers the overall site to be all allotments that are impacted by the development, which is less than the total area occupied by the wider Anglicare site.



**Figure 1:** The development site compared to the 'overall site' area. Note that the Anglicare Village extends to the North East of the Blue Lined Site Area).

The portion of the site that would be impacted by the development is equal to 78,159m<sup>2</sup> as is denoted by the red lined area in Figure 1 above.

The allotments that comprise the "overall site" area include:

- No. 284 Castle Hill Road (Lot 1 DP 177433, Lot B DP 410898, Lot 1 DP 654242, Lot 10 DP 135926, Lot 2005 DP 1088072)
- No. 411-415 Old Northern Road (Lot 100 DP 1101146), and
- No. 417-419 Old Northern Road (Lot 3 DP 1047222)

The impacted site area is generally bounded by Old Northern Road to the west, Castle Hill Road to the south, Western Road to the east (with the exception of the southeastern protrusion which follows the southern side of Barker Drive) and Clarke Drive to the north.

The site slopes away from Castle Hill Road and Old Northern Road towards a dam located in the centre of the site named Tom Thumb Lagoon. Tom Thumb Lagoon drains to the north of the site, which eventually drains to Pyes Creek.

While the Anglicare Retirement Village encompasses a larger landholding, the approved development and current Section 4.55(2) Application focus on the area of the site around Kilvinton Village (south of Tom Thumb Lagoon), Dorothy Mowll Court (along Barker Drive) and Tom Thumb Lagoon.

The site contains remnant vegetation consistent with the Blue Gum High Forest vegetation community. This vegetation is located on the corner of Castle Hill Road and Old Northern Road and scattered throughout the extensive landscaping around Tom Thumb Lagoon.

The site is burdened by a drainage easement that extends from Castle Hill Road to the southern edge of Kilvinton Village. The easement benefits Transport for New South Wales.

The site is not bushfire prone.



The site is flood prone, generally around the Tom Thumb Lagoon and the drainage path from the lagoon to Pyes Creek off site.

The site is identified as a heritage listed item of local significance as identified in Schedule 5 of the Hornsby Local Environmental Plan 2013. The Item, No. 255 is described as: "Mowll Village group including 'Lober House', 'Tower House', 'Gate House' entry gates, dairy, stables and grounds".

## 1.2 The Locality

The locality can be defined as two distinct areas, being the area within the Anglicare Castle Hill development and the areas outside of the development.

The Anglicare Castle Hill development site comprises a mix of detached, multi-unit or town house style development and residential flat buildings. All buildings within the site are dedicated to aged care or the administration of this land use. Generally, higher densities are located towards the centre of the Anglicare site, with townhouses and multi-unit housing of a 1 or 2 storey scale being located around the peripheries of the site. A church building is located in the centre portion of the site.

Beyond the confines of the Anglicare site, to the north and east is extensive low density residential development comprising of large sized, one and two storey dwelling houses on landscaped allotments. To the south of the site is residential development and remnant bushland. To the west is a small commercial centre located on the corner of Castle Hill Road and Old Northern Road, with medium density development being located along Old Northern Road.

The closest commercial centre is Castle Hill which is located approximately 1km to the south west of the Anglicare development.

## 2 THE PROPOSAL AND BACKGROUND

### 2.1 The Proposed Modification

#### Staging of Works

The primary purpose of the Section 4.55(2) modification application is to provide for the staged construction of the development in five stages as detailed in Table 1. Stage 1 must be carried out first and Stages 2 to 5 can be carried out in any order.

**Table 1: Proposed Staging**

Proposed Construction Staging	
Stage	Description of Works
Stage 1	<ul style="list-style-type: none"> <li>Construction of three apartment buildings (Buildings B8, B9A and B9B).</li> <li>Alterations to James Cook Drive.</li> <li>Construction of a new temporary road between Clarke Drive and Western Road to enable public buses to maintain their current route and service.</li> <li>Modification of the approved stormwater pipe locations (NB: re-routed TfNSW easement not proposed to be modified)</li> <li>Stage 1 area stormwater infrastructure with connections into the Stage 3 area.</li> <li>Stage 1 area landscaping works.</li> </ul>

	<ul style="list-style-type: none"> <li>Removal of the temporary road and remedial landscaping works.</li> </ul>
Stage 2	<ul style="list-style-type: none"> <li>Demolition of existing buildings within the Stage 2 area.</li> <li>Construction of five (5) villas (B21B, B22, B23).</li> <li>Construction of the new administration building (Building B19) and altered car parking.</li> <li>Construction of the café (Building B12).</li> <li>Stage 2 area stormwater infrastructure with connections into the Stage 3 area and an OSD within the Stage 3 area.</li> <li>Stage 2 area landscaping works.</li> </ul>
Stage 3	<ul style="list-style-type: none"> <li>Stage 3 landscaping works.</li> </ul>
Stage 4	<ul style="list-style-type: none"> <li>Demolition of existing buildings along Barker Drive.</li> <li>Construction of six (6) villas along Barker Drive (Buildings B25, B26 and B27).</li> <li>Stage 4 area stormwater infrastructure with connections into the Stage 3 area.</li> <li>Stage 4 area landscaping works.</li> </ul>
Stage 5	<ul style="list-style-type: none"> <li>Demolition of the building at 417-419 Old Northern Road.</li> <li>Construction of a pair of villas (B28) on the western side of Clarke Drive.</li> <li>Stage 5 area stormwater infrastructure with connections into the Stage 3 area.</li> <li>Stage 5 area landscaping works.</li> </ul>



Figure 2: Proposed Staging Plan (Source Jackson Teece dated 21/11/2024)

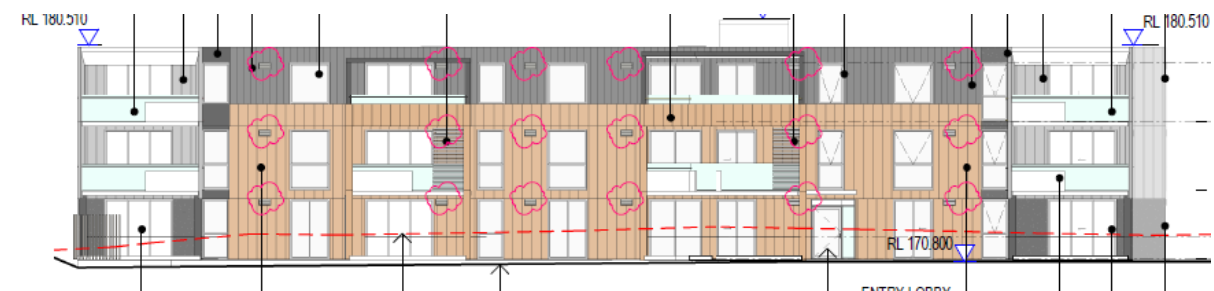


### New Temporary Road

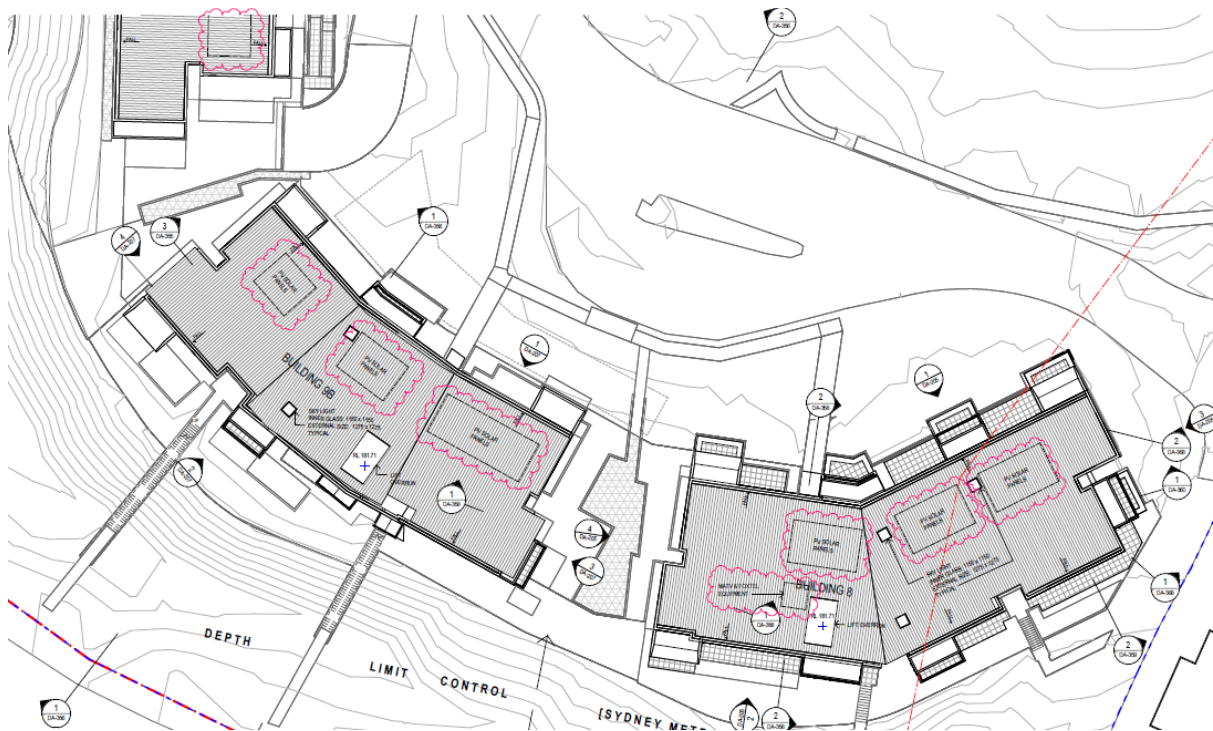
The modification will also include the introduction of a temporary road whilst James Cook Drive is removed and realigned (as per the current approval). James Cook Drive would be closed during construction. The works to James Cook Drive are completed as part of Stage 1 and include the removal of the temporary road and re-landscaping of the area.

### External Façade Changes

Solar panels would be included on the roof of the residential flat buildings as part of this Section 4.55(2) modification. The external facades of these buildings would also be altered slightly to provide for mechanical louvred vents to the bathrooms within the residential flat buildings that do not contain windows. The approved BASIX Certificate under DA/1024/2021 requires that each bathroom, kitchen and laundry have an “individual fan, ducted to façade or roof”. Therefore, the louvred vents would provide ventilation to bathrooms, kitchens and laundries required.



**Figure 3:** Northern Elevation of Building 8 showing location of proposed vents (source: Jackson Teece 12/09/2024)



**Figure 4:** Roof Plan showing location of solar panels (Source Jackson Teece dated 12/09/2024)

### Remediation

Some remediation works would likely be required at each stage. Remediation and validation of each respective stage would need to occur before moving on to the next stage. An amended Remedial Action Plan has been submitted as part of this Section 4.55(2) Application to reflect the proposed staging of the development.

**Table 2: Proposed Changes to Conditions**

<b>Condition No.</b>	<b>Condition requirements</b>	<b>Change Proposed</b>	<b>Reason for Change</b>
1	Deferred Commencement Condition	Delete Condition	Deferred Commencement condition has been satisfied and the consent is now operative
2	Approved plans and documents	Modify architectural plans	To reflect revised plans and supporting documents
3	Removal of Trees	Add text "tree removal permitted on a staged basis as described in Condition 57A and in accordance with the staging plans described in Condition 2 of this Consent".	Staging of the development
4	Construction Certificate	Add text "related to each of Stages 1, 2, 3 4 and 5"	Staging of the development
4a	Amendment of Plans	Add condition requiring an additional landscape plan be provided to demonstrate how the temporary road will be replaced with landscaping (such as turf) after the temporary road is removed.	To ensure the area occupied by the temporary road would be returned an appropriate state once the road is removed
5	Site Management Plan (SMP)	Add text "incorporating the approved staging of remediation works corresponding with the approved Staging Plan, Drawing No. DA-031 as listed in Condition 2 and the Remediation Areas Plan, Drawing No. 3, Revision 2, dated 15.11.2024, Appended B to the approved Remediation Action Plan, Revision 7 prepared by Douglas Partners Pty Ltd, dated 20 November 2024	Staging of the development
6	Implementation of the Remediation Action Plan	Modify text Remedial Action Plan, prepared by Douglas Partners Pty Ltd, dated <del>29 July 2022, reference 86630.03.R.004.Rev6.</del> Remediation Action Plan, Revision 7, dated 20 November 2024, reference: Project 86630.03	The RAP has been updated to reflect the staging of the development

7	Compliance with the Remediation Action Plan (RAP)	The Council approved Remediation Action Plan, Revision 7 prepared by Douglas Partners Pty Ltd, dated <del>29 July 2022</del> , dated 20 November 2024, reference: Project 86630.03	The RAP has been updated to reflect the staging of the development
10	Building Code of Australia	Add text "related to each of Stages 1, 2, 3 4 and 5"	Staging of the development
13	Erosion and Sediment Control Plan (ESCP)	Add text "related to each of Stages 1, 2 ,3 ,4, 5"	Staging of the development
14	Waste Transport and Disposal Records	Add text "related to each of Stages 1, 2 ,3 ,4, 5"	Staging of the development
15	Validation Report	Add text "related to each of Stages 1, 2 ,3 ,4, 5", "the corresponding site area", and "Remediation Area(s) identified on the Remediation Areas Plan, Drawing No. 3, Revision 2, dated 15.11.2024, Appended B to the approved Remediation Action Plan, Revision 7 prepared by Douglas Partners Pty Ltd, dated 20 November 2024 corresponding to the relevant Stage(s) of the approved development	To correspond to the updated RAP.
16	Site Audit Report / Site Audit Statement	Add text "Prior to issue of a Construction Certificate for each of Stages 1, 2, 3, 4 and 5 of the approved development" and "Remediation Area(s) identified on the Remediation Areas Plan, Drawing No. 3, Revision 2, dated 15.11.2024, Appended B to the approved Remediation Action Plan, Revision 7 prepared by Douglas Partners Pty Ltd, dated 20 November 2024 (TRIM D09017517) corresponding to the relevant Stage(s) of the approved development"	To correspond to the updated RAP and associated plan.
17	Long Term Environmental Management Plan	Add text "for the related development Stage"	Staging of the development
18	Acoustic and Vibration Certification	Add text "related to each of Stages 1, 2, 3, 4 and 5 of the approved development".	Staging of the development

19	Utility Services	Add text "With any application for a construction certificate" and "related to each of Stages 1, 2, 3, 4 and 5 of the approved development".	Staging of the development
20	Sydney Water - Approval	Add text "With any application for a construction certificate" and "related to each of Stages 1, 2, 3, 4 and 5 of the approved development".	Staging of the development
21	Identification of Survey Marks	Add text "related to each of Stages 1, 2, 3, 4 and 5 of the approved development".	Staging of the development
22	Appointment of a Project Arborist	Add text "related to each of Stages 1, 2, 3, 4 and 5 of the approved development".	Staging of the development
25	Stormwater Drainage	Add text "related to each of Stages 1, 2, 3, 4 and 5 of"	Staging of the development
26	On Site Stormwater Detention	Add text "system related to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development
27	Internal Driveway/Vehicular Areas	Add text "related to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development
28	Waste Management Details	Add text 'respect to each of Stages 1, 2, 3, 4 and 5 of the development:	Staging of the development
29	Certification of Traffic Engineer	Add text "related to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development
32	Protection of Adjoining Areas	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
33	Installation of Tree Protection Measures	Add text "trees to be retained within, or immediately adjacent to, each stage of works as described in Condition 57A"	Staging of the development
34	Toilet Facilities	Add text "relevant to each of Stages 1, 2, 3, 4 and 5" and "within that relevant stage".	Staging of the development
35	Erosion and Sediment Control	Add text "relevant to each of Stages 1, 2, 3, 4 and 5" and "of the relevant works".	Staging of the development
37	Garbage receptacle	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
39	Demolition	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development

40	Environmental Management	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
41	Waste Management Details	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
42	Compliance with Environmental Management Plan	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
43	Compliance with Construction Management Plan	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
44	Street Sweeping	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
45	Bushland Protection During Construction	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
48	Excavated Material	Add text "relevant to each of Stages 1, 2, 3, 4 and 5".	Staging of the development
50	Waste Management	Add text "relevant to each of Stages 1, 2, 3, 4 and 5".	Staging of the development
51	Maintenance of Public Footpaths	Add text "relevant to each of Stages 1, 2, 3, 4 and 5".	Staging of the development
53	Disturbance of Existing Site	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
55	Maintaining the Health of Trees Approved for Retention	Add text "relevant to each of Stages 1, 2, 3, 4 and 5 of the development".	Staging of the development
56	Maintaining Tree Protection Measures	Add text "relevant to each of Stages 1, 2, 3, 4 and 5 of the development".	Staging of the development
57a	Staged Construction	Insert new condition	Staging of the development
58	Fulfilment of BASIX Commitments	Add text "relevant to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development
59	Certification of Internal Driveways and Parking Areas	Add text "relevant to each of Stages 1, 2, 3, 4 and 5 of the development" and "for that stage of works".	Staging of the development



60	Sydney Water - s73 Certificate	Add text "relevant to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development
61	Certification of WSUD Facilities	Add text "relevant to each of Stages 1, 2, 3, 4 and 5 of the development" and "for that stage of work"	Staging of the development
62	Completion of Landscaping	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
63	Replacement Tree Requirements	Add text "188 trees to be planted progressively in relevant stage each of Stages 1, 2, 3, 4 and 5 accordance with the approved landscape plans listed in Condition 2 of this Consent.	Staging of the development
64	Final Certification (trees)	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
65	Safety and Security	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
66	Unit Numbering	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
67	Car Parking	Add text "relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
68	Damage to Council Assets	Add text "relevant to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development
69	Creation of Easements	<ul style="list-style-type: none"> <li>a) Add text "At Stage 1"</li> <li>b) Add text "At Stage 1"</li> <li>c) Add text "Relevant to each of Stages 1, 2, 3, 4 and 5 of the development"</li> <li>d) Add text "Relevant to each of Stages 1, 2, 3, 4 and 5 of the development"</li> <li>e) Add text "relevant to each of Stages 1, 2, 3, 4 and 5"</li> </ul>	Staging of the development
70	Submission of Excavated Material Tipping Dockets to Principal Certifying Authority	<p>Add text "removed within the boundary of the relevant Stage area", "for each of Stages 1, 2, 3, 4 and 5 of the approved development"; and</p> <p><i>"Note: These requirements apply in addition to Condition 14 requiring waste transport and disposal dockets for transport of waste (relating to remediation works) to be provided to the Principal Certifying Authority and Council prior to issue a Construction Certificate for each of Stages 1, 2, 3, 4 and 5 of the approved development."</i></p>	Staging of the development

71	Waste Management Details	<ul style="list-style-type: none"> <li>a) Add text "relevant to any of Stages 1, 2, 3, 4 and 5"</li> <li>b) Add text "Relevant to each of Stages 1, 2, 3, 4 and 5"</li> <li>c) Add Text "Relevant to each of Stages 1, 2, 3, 4"</li> <li>d) Add Text "Relevant to each of Stages 1, 2, 3, 4 and 5,</li> <li>e) Add text "Prior to issue an Occupation Certificate each Relevant to each of Stages 1, 2, 3, 4 and 5, it must be demonstrated"</li> <li>f) Add text "Prior to issue an Occupation Certificate each Relevant to each of Stages 1, 2, 3, 4 and 5, it must be demonstrated"</li> <li>g) Add text "Prior to issue an Occupation Certificate each Relevant to each of Stages 1, 2, 3, 4 and 5"</li> </ul>	Staging of the development
72	Restriction on Occupation - Housing for Seniors or People with a Disability	Add text "Prior to issue an Occupation Certificate each Relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
73	External Lighting	Add text "Prior to issue an Occupation Certificate each Relevant to each of Stages 1, 2, 3, 4 and 5.	Staging of the development
74	Works as Executed Plan	Add text "Prior to issue an Occupation Certificate relevant to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development
75	Redundant RMS Easement	Add text "Prior to issue an Occupation Certificate for Stage 1 of the development"	Staging of the development
76	Demolition of Structures	Add text "relevant to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development
77	Preservation of Survey Marks	Add text "Relevant to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development
78	Construction of Engineering Works	Add text "relevant to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development
79	Fire Safety Schedule	Add text "relevant to each of Stages 1, 2, 3, 4 and 5 of the development"	Staging of the development

80	Provision for National Broadband Network (NBN)	Add text "Relevant to each of Stages 1, 2, 3, 4 and 5"	Staging of the development
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*Development Data***Table 3: Development Data**

Control	Proposal
Site area	43.672 hectares (entire Anglicare Site), 25.705 hectares (Allotments involved in proposed development) 7.8159 hectares (Disturbed area)
GFA	Approved 10,333m <sup>2</sup> Existing 82,362m <sup>2</sup> Unchanged under this Section 4.55(2) Application
FSR (retail/residential)	0.361:1 - Unchanged under this Section 4.55(2) Application
Clause 4.6 Requests	Yes, S.40(4)(b) of SEPP HSPD approved under original development application DA/1024/2021 No further Clause 4.6 required under this Section 4.55(2) Application.
No of dwellings	<ul style="list-style-type: none"> <li>• 66 dwellings proposed, comprising:</li> <li>• 53 "apartment style" self-contained dwellings</li> <li>• 13 "villa style" attached and detached dwellings</li> </ul> Unchanged under this Section 4.55(2) Application
Max Height	<ul style="list-style-type: none"> <li>• 6.6m Administration Centre</li> <li>• 8m Residential Flat Buildings</li> </ul> Unchanged under this Section 4.55(2) Application.
Landscaped area	71% of the site (once temporary road removed and landscaping reinstated) Unchanged under this Section 4.55(2) Application.
Car Parking spaces	107 spaces approved - 66 required for the residential component Unchanged under this Section 4.55(2) Application.
Setbacks	Minimum 23m to frontages, 9.5m side setbacks. Setbacks to internal roads generally 9m or greater. Unchanged under this Section 4.55(2) Application.



**Figure 4:** Buildings marked in yellow comprise the approved development under DA/1024/2021. All buildings in grey represent the built improvements on the Angicare Site.

## 2.2 Background

On 19 September 2022 Development Application No. DA/1024/2021 was approved by the Sydney North Planning Panel (SNPP) for a Seniors housing development including: demolition; remediation, site excavation and earthworks; removal of trees and vegetation; construction of 3 x three storey residential flat buildings, 13x single storey detached and semi-detached dwellings, 1x two-storey administrative building and 1x single storey community building with self-serve cafe (a total of 66 dwellings are proposed); upgrades to the existing road network; carparking; associated infrastructure to support the development; and landscaping. This consent was issued a deferred commencement consent.

Key issues considered in the assessment of the original development comprised of the following:

- Clause 4.6 Written Request - Height of Buildings in Zones Where Residential Flat Buildings Not Permitted
- Deferred Commencement - TfNSW General Terms of Approval
- Contamination

On 31 May 2023, Council approved a Section 4.55(1A) application (DA/1024/2021/A) to modify the material palette of the approved development and amend various conditions relating to the consent.

On 1 June 2023, the Operative Consent for DA/1024/2021 was issued.

On 6 August 2024, a Pre-Lodgement Meeting No.PL/40/2024 was held prior to the lodgement of the Section 4.55(2) application.

This Section 4.55(2) Application

The proposed modification application was lodged on 1 October 2024. A chronology of the modification application since lodgement is outlined below in Table 4 including the Panel's involvement (briefings, deferrals etc) with the application.

**Table 4: Chronology of the Modification Application**

Date	Event
1 October 2024	Modification application lodged
15 October - 5 November 2024	Exhibition of the application
7 November 2024	Request for Information (RFI) letter from Council pursuant to CI 104 of the 2021 Regulation which requested the following information: <ul style="list-style-type: none"> <li>Amended Remediation Action Plan</li> <li>Amended Arboriculture Impact Assessment Report</li> <li>Root Mapping</li> </ul>
21 November 2024	Amended Information lodged as per Council's RFI letter dated 7 November 2024 was received and accepted by Council under CI 113(1) of the 2021 Regulation on 21 November 2024.

**2.3 Site History**

Applications of relevance to this development include:

- On 20 December 2020, Development Application No. DA/315/2019 for the demolition of existing structures and construction of seniors housing incorporating a 92 Bed Residential Care Facility, 156 Independent Living Units, and ancillary works and facilities including office, café, earthworks and landscaping was refused. Reasons for refusal for this application included non-compliance with Roads and Maritime Service requirements for Old Northern Road, as well as non-compliance with height of buildings development standards under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
- On 19 September 2022, the Sydney North Planning Panel granted a deferred commencement consent to Development Application No. DA/1024/2021 for a seniors housing development including demolition, remediation, site excavation and earthworks; removal of trees and vegetation; construction of 3 x three storey residential flat buildings, 13x single storey detached and semi-detached dwellings, 1x two-storey administrative building and 1x single storey community building with self-serve cafe  
A total of 66 dwellings are proposed, upgrades to the existing road network; carparking; associated infrastructure to support the development; and landscaping.
- On 31 May 2023, Council approved a subsequent Section 4.55 application (DA/1024/2021/A) to amend the colour palette and to modify various conditions.
- On 1 June 2023, the Operative consent for DA/1024/2021 was issued.



### 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.

It is noted that the amended proposal is considered to be:

- Integrated Development (s4.46) (Section 138 of the *Roads Act 1993*)
- Requiring concurrence/referral (s4.13) (Section 86 and Section 104 State Environmental Planning Policy (Infrastructure) 2007)

These matters are further 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 for s4.55 applications and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

*For Section 4.55(2) applications: 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*

The proposed changes are minor and do not substantially alter the approved development in that the land is still used for seniors housing and does not result in any significant changes to the built form. The majority of the proposed changes are internal with the only proposed external modifications being the solar panels and mechanical louvred vents to the residential flat building, and the inclusion of a temporary road.

Furthermore, the proposed changes are considered unlikely to adversely impact on the amenity of nearby residents as all additional/ amended works would be wholly within the existing retirement village. The proposed solar panels and mechanical louvred vents would not be visible from the public domain. Following Stage 1 completion, the temporary road would be removed, and James Cook Drive would be reinstated for operation. The existing landscaping removed from the area of the temporary road would be reinstated.

There are no other aspects of the proposed modification which may result in additional noise, overshadowing or overlooking for adjoining properties. Accordingly, it is considered that the proposed modification is substantially the same development as the development for which consent was originally granted as modified in July 2020.

- (a) *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 No. DA/1024/2021 was referred to Transport for NSW as integrated development under Section 138 of the *Roads Act 1993* and for concurrence under Clause 104 Traffic Generating Development of State Environmental Planning Policy (Infrastructure) 2007.

However, there is no requirement for the Section 4.55(2) application to be referred to any government agency. The proposed modifications would not impact the General Terms of Approval issued by Transport for NSW as no changes are proposed to Transport of NSW's drainage easement as part of this Section 4.55(2) Application. The proposed amendments do not affect the concurrence issued by Transport for NSW as the amended proposal would not contribute to additional traffic generation.

These matters are discussed further in Section 4 of this report.

- (b) *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*

In accordance with the Council's Community Engagement Plan and Division 2 of Part 5 of the 2021 EP&A Regulation the development application was placed on public notification for 14 days between 22 October 2024 and 5 November 2024. No public submissions were received in response to the public notification period.

- (c) *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 15 October 2024 and 5 November 2024 and no submissions were received.

- (d) *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 Determination and Statement of Reasons (DSOR) dated 19 September 2022. The reasons for the decision included:

- *The Panel determined to uphold the Clause 4.6 Variation to Section 40(4)(b) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and approve the application for the reasons outlined below and in Council's Assessment Report.*
- *In relation to the height of buildings, while the DA exceeds (by one storey) the two-storey limit under the SEPP, the Panel concurs with Council that the written request adequately demonstrates the objectives of the development standard are achieved notwithstanding non-compliance. The objective of the development standard is to avoid any abrupt change in the scale of development in the streetscape and in this case, building 8, 9 and 9B have apparent*

*height of 1 to 2 storeys when viewed from the public domain of Old Northern Road and Castle Hill Road.*

- *The panel notes the current proposal flows from extensive consultation between the application, Council, the local community and external agencies. The current design also includes amendments flowing from the review of the proposal by Council's Design Excellence Panel.*
- *In summary, the panel concurs with Council that the proposal would create modern seniors housing stock to cater for marker demand in a manner that has minimal impact on the surrounding built environment. The proposal is suitable for the site and is also consistent with the relevant planning controls. Consequently, the Panel believes approval of the proposal is in the public interest.*

The proposed modification is consistent with these reasons in that the amended 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*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

The Section 4.55(2) generally complies with the relevant environmental planning instruments including SEPP (Housing for Seniors and People with a Disability) 2004 and Hornsby Local Environmental Plan 2013. The proposal is also consistent with the Hornsby Development Control Plan 2024. No planning agreements apply to DA/1024/2021 or this Section 4.55(2) modification. The modifications under this Section 4.55(2) application would have negligible environmental impacts. The modifications would have minor social and economic impacts by enabling construction in stages,

thereby minimising disruption to residents of the retirement village. The temporary road would minimise traffic congestion during construction and would enable regular servicing of the retirement village by the bus company.

The site is considered suitable for the development, being an existing retirement village, and is considered to be in the public interest as discussed further in this report. This Section 4.55(2) application was placed on public notification, however no public submissions were received in response to the modification application.

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

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

### **3.4 Environmental planning instruments (s4.15(1)(a)(i))**

As part of the assessment of the original development application DA/1024/2021 the following Environmental Planning Instruments are relevant to this application

- State Environmental Planning Policy No. 55 Remediation of Land
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Building
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Hornsby Local Environmental Plan 2013

However, a number of these environmental planning policies have since been repealed and superseded by the following environmental planning instruments. Therefore, the Section 4.55(2) has been assessed having regard for the current environmental planning instruments

- Environmental Planning and Assessment Act 1979
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Sustainable Buildings) 2022
- State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Building
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- 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	Complies (Y/N)
SEPP Biodiversity & Conservation	<b>Chapter 2</b> Vegetation in non-rural areas <b>Chapter 6</b> Water catchments	Y
Sustainable Buildings SEPP	No compliance issues identified subject to imposition of the original conditions required under DA/1024/2021. An amended BASIX Certificate was not required as part of this Section 4.55(2) application. The amended plans would enable compliance with ventilation requirements under the approved BASIX Certificate.	Y
Seniors Housing SEPP	<ul style="list-style-type: none"> <li>• <b>Part 3</b> Design Requirements - The modified application is generally consistent with the design requirements, with reference to the site and its context.</li> <li>• <b>Part 4</b> Development Standards - the original development Application did not comply with Section 40(4)(b). A Clause 4.6 Variation Request was submitted and supported. No further Clause 4.6 Variation Request is required for this Section 4.55(2) Application.</li> <li>• <b>Part 7</b> Development standards that cannot be used as grounds to refuse consent - No concerns with regard to built form and amenity.</li> </ul>	Y
SEPP 65	<ul style="list-style-type: none"> <li>• <b>Clause 30(2)</b> Design Quality Principles - The original development application no. DA/1024/2021 was referred to Council's Design Excellence Panel. Subject to amended plans, the Design Excellence Panel found the development to be satisfactory.</li> <li>• The amended proposal is consistent to the design quality principles and the proposal is consistent to the ADG requirements. Only minor changes to the external façade of the residential flat buildings are proposed, being the installation of solar panels and mechanical louvred vents. The Section 4.55(2) was not required to be referred to the Design Excellence Panel.</li> </ul>	Y
SEPP Planning Systems	<p><b>Chapter 2: State and Regional Development</b></p> <ul style="list-style-type: none"> <li>• <b>Section 2.19(1)</b> - declares the proposal regionally significant development pursuant to Clause 3 of Schedule 7 as it comprises general development over \$30 million</li> <li>• <b>Section 3.8</b> - consent authority must have regard to matters in section 3.7(2) that are included in a development delivery plan that is applicable to land to which this Chapter applies when determining an application for development consent to carry out development on that land.</li> <li>• <b>Section 3.10</b> - declaration as regionally significant development</li> </ul>	Y



SEPP Resilience and Hazards	<b>Chapter 4: Remediation of Land</b> <ul style="list-style-type: none"> <li>• <b>Section 4.6</b> - Contamination and remediation have been considered in the amended staged Contamination Report/ RAP and the amended proposal is satisfactory subject to amended conditions.</li> </ul>	Y
SEPP Transport and Infrastructure	<b>Chapter 2: Infrastructure</b> <ul style="list-style-type: none"> <li>• <b>Section 2.119(2)</b> - Development with frontage to classified road</li> <li>• <b>Section 2.120(2)</b> - Impact of road noise or vibration on non-road development</li> <li>• <b>Section 2.122(4)</b> - Traffic-generating development</li> </ul>	Y
Proposed Instruments	No compliance issues identified.	Y
LEP	<ul style="list-style-type: none"> <li>• <b>Clause 2.3</b> - Permissibility and zone objectives</li> <li>• <b>Clause 5.10</b> - Heritage</li> <li>• <b>Clause 5.21</b> - Flood Planning</li> <li>• <b>Clause 6.4</b> - Terrestrial Biodiversity</li> <li>• <b>Clause 6.8</b> - Design Excellence</li> </ul>	Y
DCP	<ul style="list-style-type: none"> <li>• <b>Part 1</b> - General Controls</li> <li>• <b>Part 7</b> - Community</li> </ul>	Y

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

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

#### 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

The proposed modification primarily relates to staging of construction and minor changes to the design of several apartment buildings. Notwithstanding, the proposed modifications also include a temporary internal road. An amended erosion and sediment control plan was submitted in support of this Section 4.55(2) application.

The amended proposal is considered acceptable with regards to the matters for consideration under Section 6.6 (Water Quality and Quantity) of the Biodiversity and Conservation SEPP.

### **3.4.2 State Environmental Planning Policy Sustainable Buildings) 2022**

At the time Development Application No. DA/1024/2021 was determined, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 was in force. This SEPP has since been repealed and superseded by State Environmental Planning Policy (Sustainable Buildings) 2022.

Chapter 2 of State Environmental Planning Policy (Sustainable Buildings) 2022 sets out the Standards for residential development. Under SEPP (Sustainable Buildings) 2022 prescribed residential accommodation includes seniors housing that is a group of independent living units. Buildings B8, B9A and B9B contain self-contained dwellings.

The approved development included a BASIX Certificate for apartment buildings B8, B9A and B9B which indicated a commitment to a photovoltaic system with a rated output of 58kW. Whilst rooftop photovoltaic panels were shown on the stamped approved architectural drawings, the extent and location of these has been refined in detailed design as part of this Section 4.55(2) application.

The amended proposal includes amendments to the architectural drawings to show the modified extent of rooftop photovoltaic panel required to satisfy the approved BASIX commitments. Accordingly, architectural plans have been amended to reflect the extent and location of rooftop photovoltaic panels.

BASIX Certificate 1116364M\_02 (dated 14 September 2021) approved under the original development application required that each bathroom, laundry and kitchen have an "individual fan, ducted to the façade or rooftop". The louvre vents shown on the amended elevation plans for Buildings B8, B9A and B9B would provide the façade ventilation to the individual fans required under the approved BASIX Certificate.

As the only changes to buildings B8, B9A and B9B is the change to the rooftop photovoltaic panels and louvred vents, an amended BASIX certificate is not required in this instance.

The amended proposal generally complies with Sustainable Buildings SEPP and is considered acceptable.

### **3.4.3 State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004**

It is noted that on the 26 November 2021, State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 was repealed and relevant provisions were transferred into State Environmental Planning Policy (Housing) 2021. However, Schedule 7A applied savings provisions stating that the Housing SEPP did not apply to a development application made, but not yet determined on or before the commencement date.

Therefore, the relevant requirements of SEPP HSPD continue to apply to this development application.

#### Part 2 - Site-related requirements

Part 2 - Site Related Requirements of the SEPP is not relevant to the proposed modification as the site has already been deemed suitable for the approved Seniors Housing land use and the modifications do not alter the approved land use or general arrangement of buildings or utility infrastructure.

### Part 3 - Design Requirements

Part 3 - Design Requirements contains various provisions relating to the design of seniors housing. The proposed modifications will physically alter the location and extent of rooftop photovoltaic panels and provide for external mechanical louvred vents to service the approved apartments. These physical changes do not change the assessment of compliance against the provisions of Part 3, that was undertaken as part of the original Development Application No. DA/1014/2021, nor do these modifications give rise to any additional amenity impacts that require detailed consideration.

The proposed temporary road will introduce a physical element not previously assessed and therefore the modified civil infrastructure drawings include erosion and sedimentation control measures to manage stormwater runoff during construction and the modified landscape drawings provide for landscaping along the alignment of this temporary road. No change to the overall drainage and stormwater detention system is proposed.

### Part 4 - Development standards to be complied with

#### Clause 40 - Development standards - minimum sizes and building height

The development is required to have a maximum height of 8 metres or less. Additionally, a building that is adjacent to a boundary of the site (must be not more than 2 storeys in height, and a building located in the rear 25% area of the site must not exceed 1 storey in height.

As part of this Section 4.55(2) application the location of rooftop photovoltaic panels and mechanical louvres would be altered on buildings B8, B9A and B9B.

In accordance with SEPP HSPD the definition of height is "height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point".

Therefore, the rooftop photovoltaic panels are not required to be calculated in the overall maximum height of buildings of 8 metres/two storeys). The mechanical louvres would not contribute to the overall height of the buildings.

Notwithstanding the proposed rooftop photovoltaic panels would not be highly discernible from the street or any adjoining property. The solar panels would be located on the portions of roofs of the buildings furthest from the street.

### Part 7 - Development standards that cannot be used as grounds to refuse consent.

Part 7 of the SEPP contains various provisions relating to building form and amenity. The proposed modifications only propose minor changes to the extent and location of the approved rooftop photovoltaic panels and minor mechanical louvres for ventilation of apartments and neither of these modifications gives rise to any additional or substantially different outcomes to the approved development that are considered to warrant further assessment against the provisions of Part 7.

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

As SEPP HSPD applies to this development, State Environmental Planning Policy 65 Design Quality of Residential Apartment Development remains applicable to the amended development, despite the repeal of both of these environmental planning instruments.

SEPP 65 provides the planning controls for the design of residential apartment buildings. The three storey buildings B8, B9A and B9B satisfy the definition of a residential flat building as they comprise development that is at least three storeys and will provide more than four self-contained dwellings.

Proposed modifications are only minor. The only changes to the three residential flat buildings (B8, B9A, B9B) is the inclusion of rooftop photovoltaic panels and minor mechanical louvres on the north, south, east and west elevation of each of the three buildings. These changes would not have an adverse impact on the architectural merit of the buildings. There are no proposed changes to the internal layouts of these buildings and no proposed changes to the approved landscaping scheme for the development. Therefore, no further assessment of SEPP 65 is required.

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

The original development application No. DA/1024/2021 was considered regionally significant development pursuant to Section 2.19(1) as it satisfied the criteria in Clause 3, Schedule 7 of the Planning Systems SEPP: General development over \$30 million. Accordingly, the Sydney North Planning Panel is the consent authority for the application.

There was also contravention to the two-storey height limit under Clause 40(4)(b) of SEPP HSPD.

In determining DA/1024/2021, two conditions were amended by the panel being Condition 1 b) and 25 b) as follows:

#### Condition 1 b)

- Delete Condition 1 b) "*Such information must be submitted within 36 of the date of this notice*", as the condition is considered unnecessary; and

#### Condition 25 b)

- Delete the words "*assuming all pipelines are blocked*" in the last line of Condition 25 b) as the requirement is considered unnecessarily onerous.

This Section 4.55(2) application requires the wording of a number of conditions to be modified including the above conditions previously amended by the Panel.

In accordance with Clause 275(2) of the Regs and the 'Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents published on the NSW planning portal on 30 June 2020':

*The Planning Panels determine applications to modify consent for regionally significant development under section 4.55(2) of the EP&A Act which seek to modify:*

- *new or amended conditions of consent imposed by the Panel*
- *development that is subject to 10 or more unique submissions by way of an objection; or*
- *development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.*

*All other modification applications under sections 4.55(2), 4.55(1A) or 4.55(1) to development consents granted by a Panel are to be determined by the relevant council.*

As the two conditions imposed by the Sydney North Panel under DA/1024/2021 are proposed to be amended, this Section 4.55(2) meets referral criteria for determination by the Sydney North Planning Panel.

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

At the time Development Application No. DA/1024/2021 was determined, State Environmental Planning Policy No. 55 Remediation of Land was in force. State Environmental Planning Policy

(Building Sustainability Index: BASIX) 2004 has since been repealed and superseded by State Environmental Planning Policy (Resilience and Hazards) 2021

The amended proposal has been assessed against the requirements of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

#### Chapter 4: Remediation of Land

Section 4.6 of the Resilience and Hazard SEPP states that consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The Remediation Action Plan, Revision 7, prepared by Douglas and Partners Pty Ltd, dated 20 November 2024 ("the updated RAP") identifies that the required remediation works will be undertaken in a staged manner, either consecutively or concurrently (or a combination of both) across 5 stages consistent with the proposed Staging Plan which is appended C to the updated RAP.

The updated RAP now incorporates plans identifying the Remediation Areas and Remediation Excavation Areas (Drawing No's 3 to 7, Revision B, prepared by Douglas Partners Pty Ltd, dated 15 November 2024) corresponding to the proposed development staging.

Section 8.4 of the updated RAP states: 'Validation will be undertaken within each stage(s) and, if timing requires it, separate Site Audit Statements can be prepared by the Site Auditor for each stage.

According to the current approval, remediation works in accordance with the approved RAP are required to be finalised and validated before issue of a Construction Certificate (CC). This includes a requirement for a Site Audit Report to be provided to Council and the PCA prior to issue of a Construction Certificate, which sets a clear benchmark that must be achieved prior to issue of a CC.

Council's Environmental Protection Officer advised that to ensure the proposed modifications to the approved development remain substantially the same as the approval, this clear benchmark requiring submission of a Site Audit Report prior to issue of CC should be applied to the proposed development as modified and accordingly the modified conditions recommended reflect Council's expectation that a Site Audit Report is provided prior to issue of a CC related to each of Stages 1, 2, 3, 4 and 5 of the proposed modified development.

Subject to amended conditions of Consent, Council is satisfied that the amended proposal complies with Section 4.6 of the Resilience and Hazard SEPP

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

The impacted site area is generally bounded by Old Northern Road to the west, and Castle Hill Road to the south, the Sydney Metro rail line runs under the site along the southwestern (front) boundary of the site.

At the time that DA/1024/2021 was determined, State Environmental Planning Policy (Infrastructure) 2007 was in force. This policy has since been repealed and superseded by State Environmental Planning Policy (Transport and Infrastructure) 2021.



The original development application was integrated under the *Roads Act 1993* and required comment from Transport for NSW (TfNSW) under Clause 101 of State Environmental Planning Policy (Infrastructure) 2007.

The relevant clauses under State Environmental Planning Policy (Transport and Infrastructure) 2021 are.

- Clause 2.98 Development adjacent to rail corridors
- Clause 2.99 Excavation in, above, below or adjacent to rail corridors
- Clause 2.119 Development with frontage to classified road
- Clause 2.120 Impact of road noise or vibration on non-road development

There is no requirement to refer this Section 4.55(2) application to TfNSW as no changes to the conditions imposed by TfNSW are proposed.

In addition, although the original development application No. DA/1024/2021 required the concurrence of Sydney Metro due to works in proximity to the Sydney Metro trainline below the southern portion of the site, no modifications are required that would impact on this infrastructure and no changes are proposed to conditions imposed by Sydney Metro.

The proposal complies with State Environmental Planning Policy (Transport and Infrastructure) 2021 and is considered acceptable.

### **3.4.8 Hornsby Local Environmental Plan 2013**

The relevant local environmental plan applying to the site is the Hornsby Local Environmental Plan 2013 ('the LEP'). The aims of the LEP include:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to facilitate development that creates—*
  - (i) *progressive town centres, thriving rural areas and abundant recreation spaces connected by efficient infrastructure and transport systems, and*
  - (ii) *a well-planned area with managed growth to provide for the needs of future generations and people enriched by diversity of cultures, the beauty of the environment and a strong economy,*
- (b) *to guide the orderly and sustainable development of Hornsby, balancing its economic, environmental and social needs,*
- (c) *to permit a mix of housing types that provide for the future housing needs of the community near employment centres, transport nodes and services,*
- (d) *to permit business and industrial development that meets the needs of the community near housing, transport and services, and is consistent with and reinforces the role of centres within the subregional commercial centres hierarchy,*
- (e) *to maintain and protect rural activities, resource lands, rural landscapes and biodiversity values of rural areas,*
- (f) *to provide a range of quality passive and active recreational areas and facilities that meet the leisure needs of both the local and regional community,*

- (g) *to facilitate the equitable provision of community services and cultural opportunities to promote the well-being of the population of Hornsby,*
- (h) *to protect and enhance the scenic and biodiversity values of environmentally sensitive land, including bushland, river settlements, river catchments, wetlands and waterways,*
- (i) *to protect and enhance the heritage of Hornsby, including places of historic, aesthetic, architectural, natural, cultural and Aboriginal significance,*
- (j) *to minimise risk to the community in areas subject to environmental hazards, including flooding and bush fires.*

The amended development is considered to be consistent with the aims of the LEP.

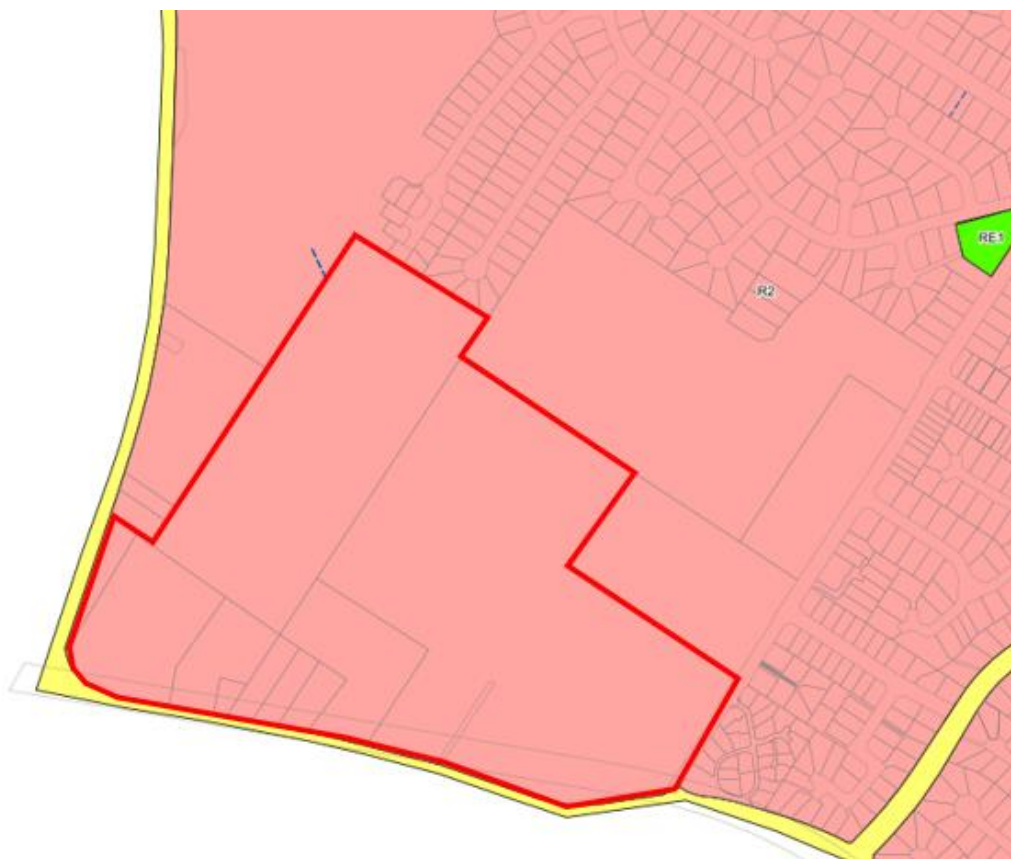
#### **3.4.8.1 Zoning and Permissibility (Part 2)**

The site is located within the R2 Low Density Residential Zone pursuant to Clause 2.2 of the HLEP.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

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

Senior's housing is prohibited under the LEP in the R2 Low density residential zone. Notwithstanding, the subject site meets the criteria specified in Clause 4 of SEPP SHSPD where land is zoned for urban purposes and where residential development is permitted. The provisions of SEPP HSPD prevail to the extent of any inconsistency with the LEP.



**Figure 5:** Extract of Zoning Map Source: (HLEP 2013)

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

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in Table 5 below.

**Table 6: Consideration of the LEP Controls**

<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Comply</b>
Minimum subdivision Lot size (CI 4.1)	N/A no subdivision proposed	N/A	N/A
Height of buildings (CI 4.3(2))	N/A - building height development standards prescribed in Clause 40 of SEPP HSPD. These controls prevail to the extent of any inconsistency with the HLEP.	N/A	N/A
FSR (CI 4.4(2))	No FSR for site	N/A	N/A
Land acquisition (CI 5.1/5.1A)	N/A	N/A	N/A
Heritage (CI 5.10)	The property is listed as a heritage item ("Mowll Village group including "Lober House", "Tower House", "Gate House" entry gates, dairy, stables and grounds") of Local significance Schedule 5 (Environmental heritage) of the HELP.	The proposed modifications do not substantially alter the approved development or adversely impact heritage items or their setting.	Yes
Acid sulphate soils (CI 6.1)	Site is not mapped as containing Acid sulphate soils	N/A	N/A
Flood planning (CI 5.21)	Development must be compatible with the flood hazard of the land.	Site not identified as a flood control lot. Local flood impacts identified around existing Tom Thumb Lagoon and drainage channel to the north. Proposed dwellings and temporary road are not located within the area of the site impacted by overland flows	Yes
Terrestrial Biodiversity (CI)	The site is not mapped on the Terrestrial Biodiversity Map	No additional trees to be removed as part of the	Yes

6.4)	The site is mapped as Blue Gum Shale Forest	proposed modifications.	
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The proposal is considered to be generally consistent with the LEP.

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

There are no proposed instruments which have been the subject of public consultation under the EP&A Act and are relevant to the proposal.

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

The following Development Control Plan is relevant to this application:

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

The DCP applies to all land within Hornsby Shire and came into effect on 18 July 2024. As discussed in Section 3.4.8.2 of this report, Seniors Housing is prohibited within the R2 zone pursuant to LEP and therefore the built form controls within Part 3 of the DCP are not applicable. SEPP (Housing for Seniors and People with a Disability) 2004 prevails over the HLEP 2013 to the extent of any inconsistency. Seniors housing is permissible in the R2 under the SEPP.

However, the relevant general provisions within Part 1 -General Controls and Part 7 - Community Use of the DCP are applicable to the development. This includes provisions relating to 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):

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):

- *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 Directions.

### 3.7 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.

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

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

- If demolition of a building proposed - provisions of AS2601

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

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

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

All works would be undertaken within the existing Anglicare Retirement Village. The proposed amendments would not be discernible from any public place external to the retirement village.

In relation to offsite impacts, the inclusion of a temporary road would minimise construction traffic on the local road network, particularly Old Northern Road and Castle Hill Road.

No changes are proposed to the Transport for NSW Easement, other than the requirement to complete the relocation of the drainage easement in Stage 1 of the development.

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

#### **3.9.1 Context and setting**

The amended 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.

#### **3.9.2 Access and traffic**

The s4.55(2) application includes staging for the project as well as construction of a temporary road. This would provide access within the site.

Construction of a temporary road to maintain access between Clarke Drive and Western Road during Stage 1 works which includes the closure of James Cook Drive. Following Stage 1 completion, the temporary road will be removed, and James Cook Drive will be reinstated for operation.

The amended development would not detrimentally impact on traffic around or through the site, as detailed in the supplied Transport Statement prepared by Stantec Australia Pty Ltd (dated 13 September 2024).

With the S4.55(2) modifications, the proposed development would not have any changes in the overall dwelling yields. As such, the parking requirement for the proposed development would be consistent with that previously approved under DA/1024/2021.

The proposed development would now be constructed in five stages and hence it is anticipated that the overall construction traffic impacts would be significantly less than what was previously proposed.

Traffic generation of the development is considered not an issue for this Section 4.55(2) application.

The Section 4.55(2) was referred to Council's Traffic Engineer who had no objection to the amended proposal.

#### **3.9.3 Public Domain**

The modified development which includes the installation of solar panels and mechanical louvred vents, the construction of a temporary road and staging of the development would have negligible impact on the public domain surrounding the site. With respect to the internal area of the site, whilst it is noted that the village is not "public" land, access into the site by the public 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 predominately relate to the

construction phase of the development. The inclusion of solar panels and mechanical louvred vents would not be discernible from the public domain.

#### **3.9.4 Utilities**

The approved development required the relocation of an existing stormwater drainage easement from Castle Hill Road to Tom Thumb Lagoon. No further changes are proposed to the stormwater drainage easement as part of this development. The stormwater easement would now be required to be relocated in Stage 1 of the construction works. No other public utilities would be impacted by the development. The temporary access road would relieve traffic congestion on the local road network during the construction process. There is sufficient space on site for the augmentation of required utilities, such as electricity substations, stormwater devices, sewer and water requirements.

#### **3.9.5 Heritage**

The amended development would not impact on the continued conservation of heritage items on site, their interpretation, settings or views.

#### **3.9.6 Water/air/soils impacts**

Contamination of soils is discussed in the body of this report.

#### **3.9.7 Flora and fauna impacts**

The site contains remnant vegetation consistent with the Blue Gum High Forest vegetation community. This vegetation is located on the corner of Castle Hill Road and Old Northern Road and scattered throughout the extensive landscaping around Tom Thumb Lagoon.

The original development application (DA/1024/2021) was supported by a Flora and Fauna Assessment prepared by Ecoplanning (dated 17 September 2021). The consent included the approval of 55 trees to be removed and 188 trees were required to be replanted on site.

In addition to the 188 trees, further exotic trees were to be planted on the subject site, as well as extensive shrubbery and ground covers. 15% of the existing tree canopy were to be impacted however 317 trees or 85% of trees on the development site were to be retained.

As part of this Section 4.55(2) Application, a Tree Location Plan Tree was prepared by Tree Wise (dated 21/11/2024). As indicated, the temporary Roadway is positioned clear of the Tree Protection Zones (TPZs) of retained trees and as such no additional tree protection measures or tree impact assessments are required. The proposed temporary Roadway is acceptable being clear of TPZs of retained trees.

The Construction Management Plan (CMP) prepared by RJA Projects (dated 11 September 2024) requires that to ensure the protection and health of trees are maintained throughout the duration of the project. All canopy, trunk and root systems of all trees to be retained on site and neighbouring properties shall be protected from damage during excavation.

In the event that the footprint of the proposed temporary roadway changes and coincides with the TPZ of any retained tree, an impact assessment is to be undertaken by the Project Arborist. There are to be no earthworks, soil compaction, soil regrading or storage of materials beyond the indicated footprint of the temporary Roadway.

#### **3.9.8 Natural environment**

The proposed development has been sited to have a minimal impact on the environment, with the bulk of buildings proposed to be located in a clear and level section of the site. Earthworks are limited

to what is required to establish the site and remove contamination. Extensive landform modification is avoided, and existing drainage lines are preserved.

Some landform modification would be required to facilitate the proposed temporary road. In examining the long section and cross-sections of the proposed temporary road, fill to a depth of 1m and excavation to a depth of 700mm. the Cut and fill would be supported by batters. Materials excavated during the road construction to be utilised for filling and grading purposes.

These are minor works, and the temporary road will be removed at the completion of the Stage 1 works and the land would be returned to its original state. A condition requiring an additional landscape plan prior to the issue of the Construction Certificate has been included in the amended consent to demonstrate how the temporary road will be replaced with landscaping (such as turf) after the temporary road is removed.

### **3.9.9 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.

In support of the original application (DA/1024/2021), a DA Noise Impact Assessment was prepared by Acoustic Logic (dated 3/09/2021).

The proposed construction of temporary road, staging of construction works and installation of solar panel and mechanical louvred vents are not expected to give rise to significant additional noise or vibration. The majority of the earthworks required to facilitate the temporary road would be in the form of fill which would not give rise to significant vibrational impacts. Excavation would only be required to a maximum depth of 1m.

While some earthworks modification is required to facilitate construction of the temporary road, these works would be located in a landscaped portion of the site in proximity to Tom Thumb Lagoon and in an area of the site with no existing dwellings. Some dwellings are located to the east of Western Road which may be temporarily affected by noise and vibration associated with the construction of the temporary road. However, the Construction Management Plan by RJA Projects dated 11 September 2024 provides measures to ensure that construction/ excavation noise shall not exceed the ambient background level (LA90 15min) by more than 20dB(A) when construction periods extend for four weeks or less, or where construction periods are greater than four weeks, construction/ excavation noise is not to exceed the ambient background level (LA90 15min) by more than 10dB(A) when measured at the nearest effected premises.

A condition of approval requires that prior to the issue of the Construction Certificate, certification is to be provided by a suitably qualified Acoustic Consultant confirming that the Construction Certificate plans for each of Stages 1, 2, 3, 4 and 5 of the approved development are compliant with the recommendations of the acoustic report.

### **3.9.10 Natural hazards**

The site is not bushfire prone.

The site is flood prone, around the Tom Thumb Lagoon and spillway. No development is proposed in these areas and no alteration of the Lagoon or flood way is proposed. Council's development Engineer had no objections to the proposed amendments to the development application.



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

A condition imposed as part of the original development application requires a number of measures to ensure the safety and security of residents. While this condition has been amended to reflect staging, the intent and requirements of the condition would remain unchanged.

The proposed inclusion of a temporary road, staging of construction works and the installation of solar panels and mechanical louvred vents would not interfere with the attainment of CPTED values. The mechanical louvres of the external façade of the residential flat buildings would not be climbable.

### **3.9.12 Social impact**

The approved development would have a positive social impact by providing housing for seniors in a configuration that meets the current market demands and trends. A number of differing housing options are available including free standing dwellings, 1-, 2- and 3-bedroom units.

The proposed modifications would enable the construction works to be undertaken to minimise disruption to existing residents of the Anglicare Retirement Village. The temporary road has been supported by CDC Bus and would enable the residents to access public transport while works to James Cook Drive are being undertaken.

Following Stage 1 completion, the temporary road will be removed, and James Cook Drive will be reinstated for operation. The area that the temporary road occupied would be reverted back to landscaping for the enjoyment of residents and staff of the retirement village.

### **3.9.13 Economic impact**

The approved development would have a positive economic impact by providing employment opportunities during construction as well as operation. 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.

The proposed modifications would enable the construction works to be undertaken in an efficient manner.

### **3.9.14 Site design and internal design**

The proposed development is suitable for the constraints of the site and is of an appropriate internal design. The inclusion of the temporary road would allow for appropriate traffic flow through the site.

### **3.9.15 Construction**

Staging of the consent would allow efficient construction of the development. 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 amended Construction Management Plan prepared by RJA Projects (dated 11 September) and a Construction Traffic Management Plan prepared by Stantec (dated 26 August 2024) which have been assessed by Council as part of this Section 4.55(2) Application. No objections are raised to the CMP or CTMP documents.

### **3.9.16 Cumulative impacts**

The modified development would not result in any adverse cumulative impacts

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

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

The site is considered suitable for the amended development as outlined in the body of this report.

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

These submissions are considered in Section 4.3 of this report.

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

The modified proposal is in the public interest as it would create modern seniors housing stock to cater for market demand in a manner that has minimal impacts on the surrounding built environment, including onsite residential living units. It is in the public interest to permit the construction of seniors housing development that is consistent with planning controls, or where variations are required, where those variations do not permit the generation of unacceptable impacts on the existing built or natural environments.

The staging of construction works would minimise disruption to existing residents of the retirement village. The inclusion a temporary road would reduce traffic congestion of Castle Hill Road and Old Northern Road during construction works, particularly traffic congestion created by construction vehicles such as trucks.

The amended application satisfactorily addresses Council's criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Approval of the proposal would be in the public interest.

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

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 7** below.

**Table 7: Consideration of the Requirements under the Regulation**

Matter	Comment	Comply
<b>Clause 100 Application for modification of development consent</b>		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The Section 4.55(2) application has been made by DFP Planning Pty Ltd with appropriate owners' consent provided to lodge the development application.	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 allow for staging of infrastructure and construction works, the construction of a temporary road and installation of solar panels and mechanical louvred vents to the residential flat buildings and is not to correct a minor error, misdescription or miscalculation.	Y
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification given there are no significant changes to the external building form or features. Only minor changes are solar panels and mechanical louvred vents to the residential flat buildings and the construction of a temporary road. Any other impacts were considered in the original proposal, which was supported by Council. Refer to key issues section (where required).	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))	The amended proposal is not required to be accompanied by a biodiversity development assessment report.	N/A
Owner's consent (CI 100(1)(i))	Written owners' consent 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; however, an updated BASIX Certificate is not required.	N/A
Penrith Lakes Development Corporation (CI 101)	The proposed modification is not within the Penrith Lakes Development Corporation area.	N/A

Qualified designer statement for residential apartment development (CI 102)	The proposed modification does not involve substantial changes to residential apartment development and a qualified designer statement is not required.	N/A
Mining and petroleum development consents (CI 102)	The proposed modification does not require mining and petroleum development consents.	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

#### Original Development Application - Referral Agencies

- The original development application was referred to the Rail Authority for the rail corridor under CI 86(3) of the Infrastructure SEPP. Sydney Metro has determined that no concurrence role was triggered in respect of the Metro Northwest Line rail corridor by the DA under clause 2.98 of the Transport and Infrastructure SEPP, because the proposed development did not involve excavation in excess of 2m below ground level.
- The original development application was referred to Transport for NSW under CI 104 of the Infrastructure SEPP Development that is deemed to be traffic generating development in Schedule 3.
- The original development application was referred to Council's Design Review Panel under CI 28(2)(a) of SEPP 65.

#### Original Development Application - Integrated Development

- The original development application was referred to TfNSW as integrated development under Section 138 of the *Roads Act 1993*. TfNSW assessed the application and provided concurrence as a deferred commencement condition.

#### The Section 4.55(2) application

The Section 4.55(2) application does not require referral to any agencies for concurrence or referral as discussed in the table below.

**Table 8: Concurrence and Referral Agencies**

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements</b> (s4.13 of EP&A Act)			
Environment Agency Head (Environment,	S7.12(2) of <i>Biodiversity Conservation Act 2016</i>	No referral required	N/A

Energy & Science Group within DPIE)			
Rail authority for the rail corridor	S2.98 of Transport and Infrastructure SEPP	No changes with respect to excavation are proposed under this modification which trigger re-referral to the rail authority under the SEPP.	N/A
<b>Referral/Consultation Agencies</b>			
RFS	S4.14 - EP&A Act Development on bushfire prone land	The site is not bushfire prone	N/A
Electricity supply authority	S2.48 - Transport and Infrastructure SEPP	Clause not triggered	N/A
Rail authority	CI2.98 - Transport and Infrastructure SEPP Development on land adjacent to a rail corridor.	Clause not triggered	N/A
Transport for NSW	CI2.122 - Transport and Infrastructure SEPP Development that is deemed to be traffic generating development in Schedule 3.	The original DA was referred to TfNSW as traffic generating development as >50 car parking spaces were proposed, and the site has direct connection to classified road.  TfNSW did not object under CI 104 of SEPP (Infrastructure) 2007 and provided conditions which were included in the consent granted.  No changes to car parking or access to the classified road are proposed under this this Section 4.55(2) application.	N/A
Design Review Panel	CI 28(2)(a) - SEPP 65 Advice of the Design Review Panel (Now Chapter 4 of Housing SEPP)	The original application was referred to Council's Design Excellence Panel (DEP) for design advice.  No changes are proposed under this Section 4.55(2) Which would warrant referral to Council's DEP.	
<b>Integrated Development (s4.46 of the EP&amp;A Act)</b>			
RFS	S100B of <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land for	The site is not bushfire prone	N/A

	residential or rural residential purposes or development of land for special fire protection purposes		
Natural Resource Access Regulator	S89-91 of <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	No Activity approval required. Tom Thumb Lagoon and spillway are not mapped water courses.	N/A
TfNSW	S138 of <i>Roads Act 1993</i>	TfNSW assessed the original application and provided concurrence as a deferred commencement condition. No changes are proposed to the TfNSW drainage easement as part of this Section 4.55(2) application and therefore referral is not required.	N/A

Accordingly, the modification application was not referred to any agencies for comment/concurrence/referral as required by the EP&A Act and Clause 109 of the 2021 EP&A Regulation and outlined in Table 8.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

#### 4.2 Council Referrals

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

**Table 9: Consideration of Council Referrals**

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and proposed temporary road and raised no objections subject to conditions. <b>Outcome:</b> Satisfactory subject to amended conditions being imposed (refer to Attachment A).	Yes
Traffic	Council's Traffic Engineer reviewed the submitted Planning Report (DA/24/09/24), Architectural drawings (12/09/2024) and Transport Statement (dated 13/09/24). <b>Outcome:</b> Satisfactory subject to amended conditions being imposed (refer to Attachment A).	Yes

Tree Preservation	<b>Outcome:</b> Satisfactory subject to amended conditions being imposed on any consent granted (refer to Attachment A).	Yes
Waste	<b>Outcome:</b> Satisfactory subject to amended conditions being imposed on any consent granted (refer to Attachment A).	Yes
Environmental Protection	Council's Environmental Protection Officer reviewed the submitted Remediation Action Plan and raised no objections subject to amended conditions. <b>Outcome:</b> Satisfactory subject to amended conditions being imposed (refer to Attachment A).	Yes
Heritage	The proposed modifications do not substantially alter the approved development or adversely impact heritage items or their setting. No heritage concerns are raised to the proposed modifications. <b>Outcome:</b> Satisfactory. No amended or additional conditions required.	Yes

### 4.3 Notification and Community Consultation

The modification application was notified in accordance with the Council's Community Engagement Plan from 22 October 2024 until 5 November 2024. The notification included the following:

- A sign placed on the site
- Notification letters sent to adjoining and adjacent properties (185 letters sent)
- Notification on the Council's website.

The Council received nil submissions in response to this Section 4.55(2) Application.

## 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 Tree Preservation

An amended Arboriculture Impact Assessment must be prepared by an AQF5 qualified arborist and must be submitted to Council in accordance with Council's report guidelines.

If the construction or excavation work is proposed within the Tree Protection Zones (TPZ) of trees on the subject site and/or adjoining land, a Root Mapping Report prepared by an AQF5 qualified arborist must be submitted to Council in accordance with Council's report guidelines.

Resolution: The Tree Management Team have reviewed the Addendum Letter to Arboricultural Impact Assessment and acknowledge that the temporary Roadway is positioned clear of the Tree Protection Zones (TPZs) of retained trees and as such no additional tree protection measures or tree impact assessments are required. All other tree protection measures and conditions are to remain.

### 5.2 Contamination

The site contains contamination comprising asbestos and organochlorine pesticides (OCPs) being detected in site soils. Contamination was raised as a "Key Issue" in the assessment report prepared in relation to the original development (DA/1024/2021). The assessment of the development application concluded that sufficient detail had been provided to identify contamination across the site and that



the supplied Remedial Action Plan (RAP) was sufficient to ensure that the site can be made fit for the intended use. Conditions were imposed in the consent in regard to the remediation of the site. As remediation works need to occur prior to construction on site, a Validation Report was required to accompany any application for a construction certificate.

According to the original approval, remediation works in accordance with the approved RAP are required to be finalised and validated before issue of a Construction Certificate. This sets a clear benchmark which must be achieved prior to issue of a CC.

The current Section 4.55(2) application proposes a number of changes to conditions of consent that would enable remediation works to be completed in a staged manner with Site Validation and a site Audit Statement only being required to be submitted to the Principal Certifier (PC) and Council prior to 'each relevant' CC.

By staging the remediation works, ambiguity was created as to the extent of remediation works to be completed at each stage. There was no mechanism to ensure the respective areas of the site have been satisfactorily remediated.

To eliminate any uncertainty and confusion, an updated RAP incorporating the proposed staging was and clearly detailing the remediation and validation requirements for each phase of remediation works corresponding to the proposed staging plans was requested.

Resolution: The Remediation Action Plan, Revision 7, prepared by Douglas and Partners Pty Ltd, dated 20 November 2024 ("the updated RAP") identifies that the required remediation works will be undertaken in a staged manner, either consecutively or concurrently (or a combination of both) across 5 stages consistent with the proposed Staging Plan which is appended C to the updated RAP.

Environmental Protection has assessed the proposed modification and raised no objections to the amended proposal subject to modified conditions of consent.

### **5.3 Stormwater**

The original development application included the relocation of a Transport for NSW Drainage Easement. No changes are proposed to this drainage easement are proposed as part of this Section 4.55(2) Application.

Stormwater works would now occur in Stage 1, Stage 2 Stage 4 and Stage 5 to support the respective development of each stage.

This Section 4.55(2) Application includes slightly modifying the alignment of the Stage 1 drainage lines.

Resolution: Amended civil engineering plans were prepared by PTC. dated 19 September 2024 in support of this Section 4.55(2) application.

Civil infrastructure for each stage is generally contained within each stage area depicted on the architectural drawings although all stage areas drain to the Stage 3 area and hence some civil works and stormwater connections will be required in the Stage 3 area as and when relevant and as shown on the modified civil drawings.

The Stage 3 area will also include an OSD tank servicing the Stage 2 area, and this will be constructed commensurate with the Stage 2 works.

This Section 4.55(2) application was assessed by Council's Development Engineer who had no objections to the amended stormwater arrangements subject to amended conditions of Consent.

The issue has been resolved through amended conditions of consent.

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**5.4 Clause 4.6 Written Request - Height of Buildings in Zones Where Residential Flat Buildings Not Permitted**

The original development application No. DA/1024/2021 did not comply with Section 40(4)(b) "Height in zones where residential flat buildings are not permitted" of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The development is required to have a maximum height of 8 metres or less. Additionally, a building that is adjacent to a boundary of the site (must be not more than 2 storeys in height, and a building located in the rear 25% area of the site must not exceed 1 storey in height.

As part of this Section 4.55(2) application the location of rooftop photovoltaic panels and mechanical louvres would be altered on buildings B8, B9A and B9B

Pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 the definition of height is "height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point".

Resolution: the rooftop photovoltaic panels are not required to be calculated in the overall maximum height of buildings of 8 metres/two stories). The mechanical louvres would not contribute to the overall height of the buildings.

Notwithstanding the proposed rooftop photovoltaic panels would not be highly discernible from the street or any adjoining property.

**5.5 Deferred Commencement - TfNSW General Terms of Approval**

As part of the assessment of Development Application No. DA/1024/2021, "Deferred Commencement - TfNSW General Terms of Approval" was identified as a "Key Issue".

The original development application was considered integrated development under *Roads Act 1993*. The reason that application was integrated development is that the proposal would reroute an existing TfNSW easement that connects Castle Hill Road with Tom Thumb Lagoon.

TfNSW recommended a deferred commencement condition be imposed. The deferred commencement condition required TfNSW's approval for works within the Castle Hill Road reserve pursuant to Section 138 of the *Roads Act 1993*.

Resolution: On 31 May 2023, the applicant provided advice that the deferred commencement condition had been met. The Operative consent was issued by Council on 1 June 2023. Condition 1 can now be deleted.

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**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, and issues raised in the key issues identified in this report, it is considered that the application can be supported.

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

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**7 RECOMMENDATION**

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It is recommended:

- That application No. DA/1024/2021/B for staging of construction works, the inclusion of a temporary road and the installation of social panels and mechanical louvred vents at 284 Castle Hill Road, 411-415 Old Northern Road & 417-419 Old Northern Road, Castle Hill be APPROVED 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