



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

SOUTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSTH-475 DAM0146/2024
PROPOSAL	Modification to 7.2012.331.1 – (Seniors Living Development (Staged Concept Approval)) – Modifications including minor changes to the approved building envelopes including increased building separation, a minor increase in independent living units for Stage 1, increase in height, rationalisation of the basement, parking and access arrangements and improved internal amenity
ADDRESS	<u>Application Site</u> 171 Wattle Road, Shellharbour City Centre Lot 2 DP 1043053 <u>Associated Site</u> 191 Wattle Road, Shellharbour City Centre Lot 2001 DP 1250959
APPLICANT	The Uniting Church in Australia Property Trust (NSW)
OWNER	The Uniting Church in Australia Property Trust (NSW)
MOD LODGEMENT DATE	14 January 2025
ORIGINAL DA DETERMINATION DATE	10 February 2014
APPLICATION TYPE	Modification Application under Section 4.55(2) – Modification to a regionally significant development and pertains to Council related development over \$5 million.
REGIONALLY SIGNIFICANT CRITERIA	<p>Section 2.19(1) and Clause 3 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal as regionally significant development as the proposal is Council related development over \$5 million.</p> <p>Furthermore, the NSW Planning Panel document ‘Sydney District and Regional Planning Panels Operational Procedures’ dated September 2022 requires planning panels to determine applications to modify consent for regionally significant development under section 4.55(2) of the <i>Environmental Planning and Assessment Act 1979</i>,</p>

	which seek to modify development for which the applicant/landowner is Council. The proposed stormwater design is reliant upon drainage to a detention basin located within Council owned land to the west of the subject site (Lot 2001 DP 1250959) and the CIV is more than \$5 million. As such, the modification DA is referred to the Panel for determination.
CIV	\$110,269,814.00
CLAUSE 4.6 REQUESTS	None
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>SEPP (Infrastructure) 2007</i> • <i>SEPP No. 55 Remediation of Land</i> • <i>SEPP (Housing for Seniors of People with a Disability) 2004</i> • <i>SEPP Policy No. 65 – Design Quality of Residential Flat Development</i> • <i>SEPP (Housing) 2021</i> • <i>Illawarra Regional Environmental Plan No.1 (Deemed SEPP)</i> • <i>Shellharbour Local Environmental Plan 2000</i> • <i>Shellharbour Development Control Plan 2013</i> • <i>Uniting Care Ageing Precinct Development Strategy (PDS)</i>
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>Notification period 13 February 2025 to 12 March 2025</p> <p>No submissions received</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION	<p>Attachment A: Draft Conditions of Consent</p> <p>Attachment B: State Environment Planning Policy (Housing for Seniors and People with a Disability) 2004</p> <p>Attachment C: State Environmental Planning Policy (Housing) 2021</p> <p>Attachment D: Apartment Design Guide Compliance Table</p> <p>Attachment E: Modification Plans</p> <p>Attachment F: DA0331/2012 Concept Approval Notice of Determination</p> <p>Attachment G: DA0331/2012 Assessment Report</p> <p>Attachment H: DA0331/2012 Approved Suite of Plans</p> <p>Attachment I: Civil Engineering Stormwater Drainage</p> <p>Attachment J: Civil Bulk Earthworks</p> <p>Attachment K: Traffic Statement</p>
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	None Required
RECOMMENDATION	Approval

DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	14 May 2025
PLAN VERSION	As lodged on NSW Planning Portal 23.04.2025 Plan Suite made up the following versions; 01.11.2024 Revision A 06.11.2024 Revision D, E and F 17.04.2025 Revision G and Revision H
PREPARED BY	Cleo Dyer – Town Planner – Statutory Planning
DATE OF REPORT	7 May 2025

1. EXECUTIVE SUMMARY

The modification application has been lodged pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and seeks consent for modifications to a consent granted under DA0331/2012 approved by the Joint Regional Planning Panel on 10 February 2021. This consent approved the Concept Approval for a seniors housing development and ancillary non-residential development at 171 Wattle Road, Shellharbour City Centre ('the site'). The original approval determined the key components of the proposal, including the total number of buildings and associated building heights, building envelopes, setback design, total number of units, parking spaces, ancillary uses, vehicle access and floor space ratio.

The application is referred to the Southern Regional Planning Panel ('the Panel') as the original development application was regionally significant development, pursuant to Part 3 of Schedule 4A of the EP&A Act as the development application had a Capital Investment Value of \$119,000,000.00. The proposed modification is declared as regionally significant development pursuant to Section 2.19(1) and Clause 3 of Schedule 6 of *SEPP (Planning Systems) 2021* as the proposed modification application is development for Council related with a cost exceeding \$5 million. Henceforth, the Southern Regional Planning Panel is the authorised consent authority for the subject application and the proposal is consistent with this Policy. Furthermore, in conjunction with the above referenced planning provision, the NSW Planning Panel document 'Sydney District and Regional Planning Panels Operational Procedures' dated September 2022 requires planning panels to determine applications to modify consent for regionally significant development under section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, which seek to modify development for which the applicant/landowner is Council. The proposed modification is reliant upon Council stormwater drainage infrastructure and connection to a detention basin located within Council owned land to the west of the subject site (Lot 2001 DP 1250959). to a detention basin located within Council owned land to the west of the subject site (Lot 2001 DP 1250959).

The proposed modification seeks consent to align the approved concept approval with updated planning instruments, specifically the *State Environmental Planning Policy (Housing) 2021* and associated Apartment Design Guidelines (ADGs) which have superseded planning provisions considered within the original assessment. The proposed modification seeks to clarify the stage 1 development area of the concept development and modify the design parameters associated within the stage 1 portion of the overall development site. The modifications include minor amendments to the stage 1 building envelopes, including the setbacks, building heights, building separation, basement entry location, number of units and parking spaces. Furthermore, the modification seeks to realign the internal road, the road setbacks and the provisions of on-street parking along the western boundary. The modification also seeks to include communal facilities within the Stage 1 site boundary and reduce the level of excavation associated with the basement car parking area. The proposed modifications to the concept design and development are considered to be minor in nature and in turn, alter the waste collection design, solar access, cross ventilation, natural light corridors and deep soil zones. In summary, the proposed modification seeks to establish better alignment and compliance with the evolved planning provisions, which is considered to satisfy that it is substantially the same development test required by Section 4.55 of the *EP&A Act*.

The application was placed on public exhibition from 13 February 2025 to 12 March 2025, with zero submissions received.

An initial briefing was held with the Panel on 12 March 2025, where key issues were discussed, including the approval history and approved development conceptual scope, the proposal rationalisation of the modifications with consideration against the updated planning provisions, the external concurrences and referrals, outstanding referrals and the public consultation period.

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

- *Building Separation* – The proposed modification to the building envelopes associated with the stage 1 buildings (R1, R2, R3 and R4) demonstrates an increase in the separation between the buildings. The building separation is proposed to be increased from 9m to 12m to comply with objective 2F of the ADG. However, the modification application also presents setbacks of varied distances that are less than 12m between R1 and R3, R1 and R2, R2 and R3, and R3 and R4. As recommended within section 2F of the ADG, the distance between habitable rooms and balconies is to be 12m. The separation arrangement demonstrates varied reductions, however all being greater than 9m. Despite this, the proposed modification is considered to be an improved separation design, noting the distance presented between the buildings as per the approved concept design complied with SEPP Policy No. 65 – Design Quality of Residential Flat Development as per the relevant provisions at the time of assessment and the increase from 9m demonstrates an updated pattern that is responsive to the updated guiding documentation.
- *Engineering Matters* – Additional information was sought in relation to earthworks, retaining wall design and access considerations, as well as clarification to the overall conceptual design to safeguard the suitability of the associated engineering matters throughout the progression of the development in an ongoing capacity to completion
- *Numerical Compliance* - Consideration has been given to achieving compliance within later stages and is expected to be practically achieved as the amendments demonstrates within the subject application are considered to be numerically minor in value. As such, the amendments do not present an arrangement whereby later stages could not functionally or practically absorb or offset the proposed amendments demonstrated within the stage 1 area. The proposed modification numerical changes are noted;
 - The concept approval permitted 141 x ILU within the stage 1 buildings (R1 – R4), and the modification seeks to increase the ILU by 11, presenting a total of 152 located within stage 1. The modification does not seek to amend the approved cumulative total of 352 x ILU, and additional 11 x ILU forms 3.1% of the permitted total. The remaining 200 x ILU to be offered within later stages and even distributed within the remaining six (6) residential flat buildings, which is approximately 33.33 units per building. As such the delivery of the remaining 200 units to be practically achieved considering the storey composition of the remaining buildings and concentration of the communal space featured within the later stages. Furthermore, noting the economic and social drivers in which have influenced the subject modification application to provide a greater diversification of unit mix, it is anticipated the later stages can suitably absorb the reduced amount
 - The GFA within stage 1 demonstrates an increased GFA by 287m², which is 0.6% of the total permitted 45,800m². The increase in GFA is complementary to the increased ILU, as the reduce number of units within later stages suggest a trend

of a reduced GFA. Henceforth, a reduction in units and GFA within later stages is expected to be practically demonstrated. The increased 0.6% is notably minor and is anticipated to be accommodated within later stage

- The concept approval notes 456 on-site car parking space are required, and stage 1 presents an offering of 157 space, which is a minor reduction of 9 parking spaces. The remaining 299 spaces are expected to be evenly dispersed across the later stages of the site. Noting all remaining 7 buildings, including the dedicated place of worship demonstrate sufficient parking facilities, and through on-street parking along Road no.1 and the increase in 9 space is expected to be evenly spread across the remainder of the throughout the site. The 9 parking spaces equate to 1.97%, which is minor numerically and does not inhibit full compliance for the overall development. Furthermore, a car parking calculation has been completed in accordance with the parking provisions within both the *SEPP (Housing for Seniors or People with a Disability) 2004* and *SEPP (Housing) 2021* and demonstrate the on-site parking is numerically compliant. The parking provisions with both instruments demand a parking yield of 70.4 space for the total concept approval site of 352 x ILU. Therefore the 157 available on-site parking space within stage 1 provides a surplus in parking when assessed against the provisions of the referenced instruments. Compliance with the concept approval is expected to be achieved, and the parking parameters specified within the concept approval provide satisfactory parking.

As highlighted the proposed changes and redistribution of ILUs, parking and GFA are considerably minor in numerical value and do not demonstrate that later stages could not unreasonably accommodate the amendments. The amendments to later stages as a result of the amendments are not expected to be problematic and full compliance suitably achieved. To support the amendments and ensure compliance with the cumulative total specified within the concept approval notice of determination is retained, conditions to be updated to reflect the redistribution Condition no.1 Concept Approval to reference changes within stage 1 to be absorbed and or offset within later stages to ensure compliance is achieved within an ongoing capacity.

Both key matters above are considered to be resolved. 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.

1. THE SITE AND LOCALITY

1.1 The Site

The site is located at 171 Wattle Road, Shellharbour City Centre and has a legal description of Lot 2 DP 1043053 (see Figure 1). The site is currently vacant; however, a number of existing established trees are located throughout the site, primarily along the site perimeter, and an internal access road extends from north to south through the centre. The access road traverses the length of the site and connects to Wattle Road at the northern end and provides vehicle access to the adjoining site to the south, being 15 Benson Avenue, Shellharbour City Centre.

The site is a large, irregular allotment with a total area of 42,600m². The natural topography is a notable feature of the site, the contours presenting a fall from east to west by 12m, with a cross slope from south to north by 7m. The eastern boundary of the site is along Wattle Road, and spans approximately 430m in length.

The subject site is currently zoned as R3 Medium Density Residential in accordance with the Shellharbour Local Environmental Plan 2013 and seniors housing is permitted with consent.

The associated site is located at 191 Wattle Road, Shellharbour City Centre and is Council owned land, commonly referred to as 'Benson Basin'. The stormwater arrangement and design is reliant upon the connection to the existing drainage basin within this land and as such forms part of the application (see Figure 1).

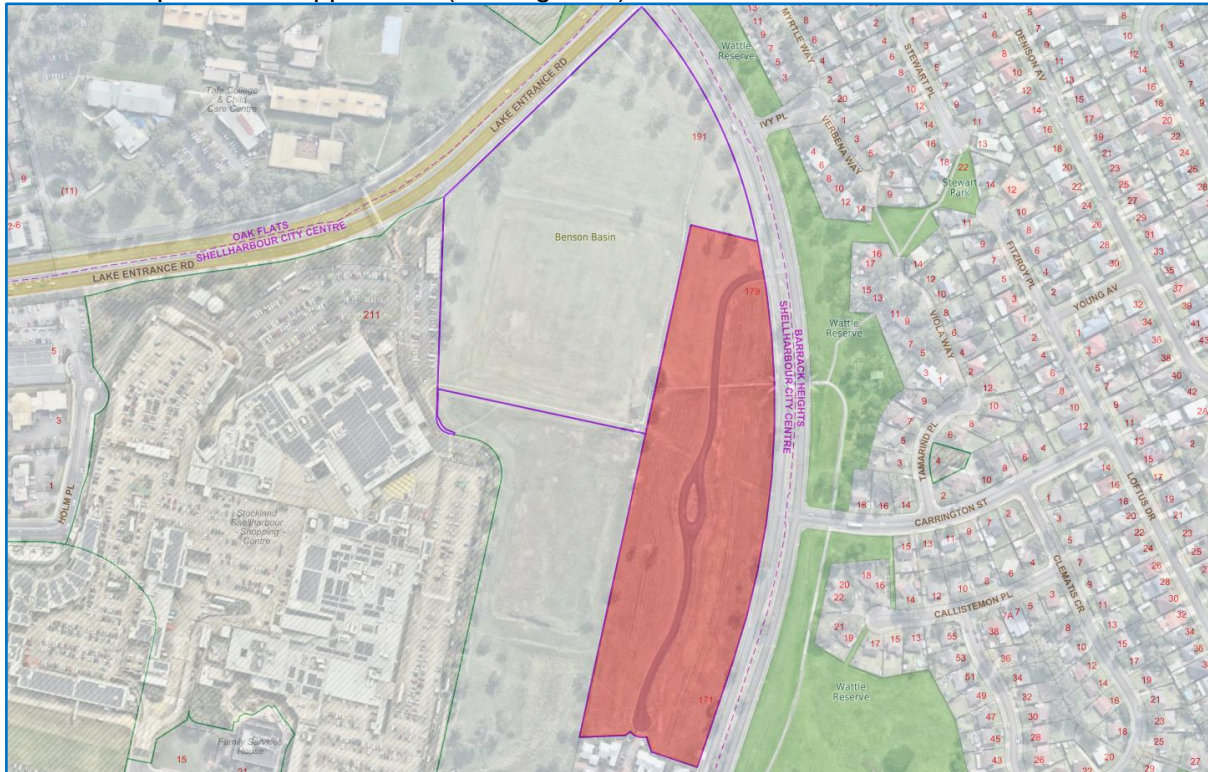


Figure 1: Subject site is highlighted in red and the Council owned land is outlined in purple.

1.1.1 Property Constraints

The site is affected by the following significant land constraints:

- Flood Affected
- Obs. Height Lines RL 100
- Obs. Height Surface – 52 – 127m

1.1.2 Restrictions on Title

There are restrictions on title burdening each lot, as described below:

- Right of Carriageway 15 wide and variable

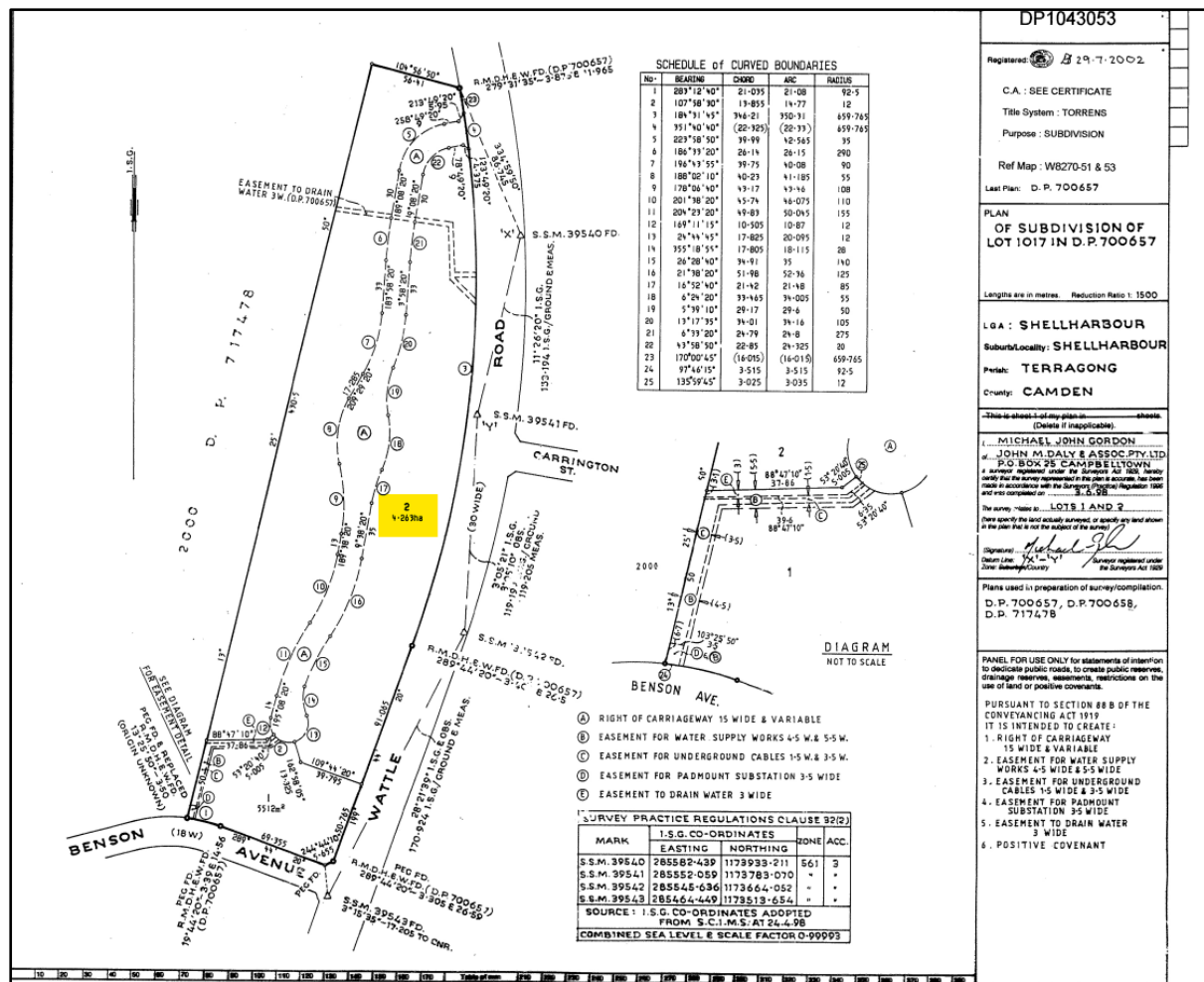


Figure 2: Lot 2 DP 1043053

1.2 The Locality

The site is located within the Shellharbour City Centre and is within a 400m radius of the Shellharbour Stockland Shopping Centre, Shellharbour City Council Civic Centre, Shellharbour TAFE campus and the Shellharbour Hospital. Furthermore, the site is well connected to public transport routes, being within walking distance to bus stops along Wattle Road, Lake Entrance Road and College Avenue and Shellharbour Junction Train Station is located within 5km of the site.

The site forms part of the Shellharbour City Centre Commercial Development Masterplan, and is identified as Precinct M Eastern Residential – Wattle Road for high density residential living. Precinct M is located at the eastern edge of the City Centre and is identified as the transition site between the established low density residential context to the east and the town centre to the west, through the offering of diverse residential living and development.

The adjoining site immediately to the south is 15 Benson Avenue, which is community housing development owned by NSW Land and Housing Corporation. The eastern boundary of the site has a frontage to Wattle Road, with established residential development located along the opposite side of the road. Wattle Road serves as the natural boundary between the Shellharbour City Centre and the low-density residential development.

The adjoining site immediately to the north and north-west is a public reserve known as Benson Bason, which is Council owned land. To the west of the site, the western boundary is

shared between a vacant privately owned parcel of land, however a recent development application has been approved for the site and includes a future precinct development for residential flat buildings to occupy the site and stage 1 site preparation works (See Figure 3).



Figure 3: Subject site locality and existing development context

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

The proposal seeks consent for the modification of DA0331/2012. The concept approval granted consent for a seniors housing development and ancillary non-residential uses. The concept approval determined the building envelopes of eleven (11) buildings located within the site and the associated building heights, inclusive of roof plant, setbacks and associated articulation zones and the separation between the buildings. Furthermore, the concept approval specified the number on site car parking spaces and vehicle access, the gross floor area, total number of independent living units and the ancillary uses.

The modification application seeks to align the concept approval with the updated planning instruments and provisions which have evolved and superseded the originally considered planning framework. The modification application demonstrates general alignment, specifically with the *State Environmental Planning Policy (Housing) 2021* and Apartment Design Guidelines (ADGs). The details of the proposed modifications are outlined below:

- creation and establishment of the stage 1 component as part of the concept approval, which includes buildings R1, R2, R3 and R4 and an internal access road. All remaining buildings and works will form stage 2 of the concept approval;
- the overall GFA of the development will remain as approved (45,800m²), however an increase to the GFA within stage 1 is proposed (increase by 287m²);
- setback amendments, to include revised setbacks along the eastern and western boundaries, Building R1 and R3 front setbacks along Wattle Road and Building R2 and R4 along Road no.1;

- amendments the landscape setbacks and provisions of on-street parking along the western boundary;
- the overall number of units remain as per the concept approval (352 x independent living units), however an increase in the number of units contained within stage 1 (11 additional units, resulting in a total of 152 units as part of Stage 1);
- the overall GFA of communal facilities remains as approved, however 536m² of this space to be reallocated to stage 1 and to be located within Building R3;
- overall car parking remains as approved (456 x spaces); however, stage 1 will result in a reduction of 9 spaces;
- basement entry reconfiguration via a single access driveway between Buildings R2 and R4;
- reduction in the level of excavation associated with the basement car parking area;
- minor increase to building heights as a result of the flood affection and improvements proposed to the Wattle Road interface, with an increase of approximately 800mm (maximum), noting that the increase in height remains generally consistent with the maximum height approved under the concept approval;
- modification to the approved building envelopes to provide increased separation between the buildings;
- Park Road amended to be referenced as Road No. 1;
- Road No.1 realignment; and
- other minor modifications, including, but not limited to, waste collection design, solar access, cross ventilation, natural light to corridors and deep soil zones.

Key plans and development data are included below, highlighting comparisons between the original approval and proposed modifications.

Table 1: Key Development Data

Control	Concept Approval	Proposal – Modification to Stage 1
Site Area	42,600m ²	Total Site 42,600m ² Stage 1 Area 19,012.1m ² (inclusive of site road)
GFA	45,800m ²	17,608m ²
Clause 4.6 Request	Not Applicable – The Concept Approval prevails over the Shellharbour Local Environment Plan floor space ratio, minimum lot size and height of buildings.	
No. of Apartments	352	152

Max Height	20m	19.8m
Car Parking Spaces	456	157
Setbacks	Wattle Road – 8m Western Boundary – 17m	Wattle Road – 7m Western Boundary – 15.8m

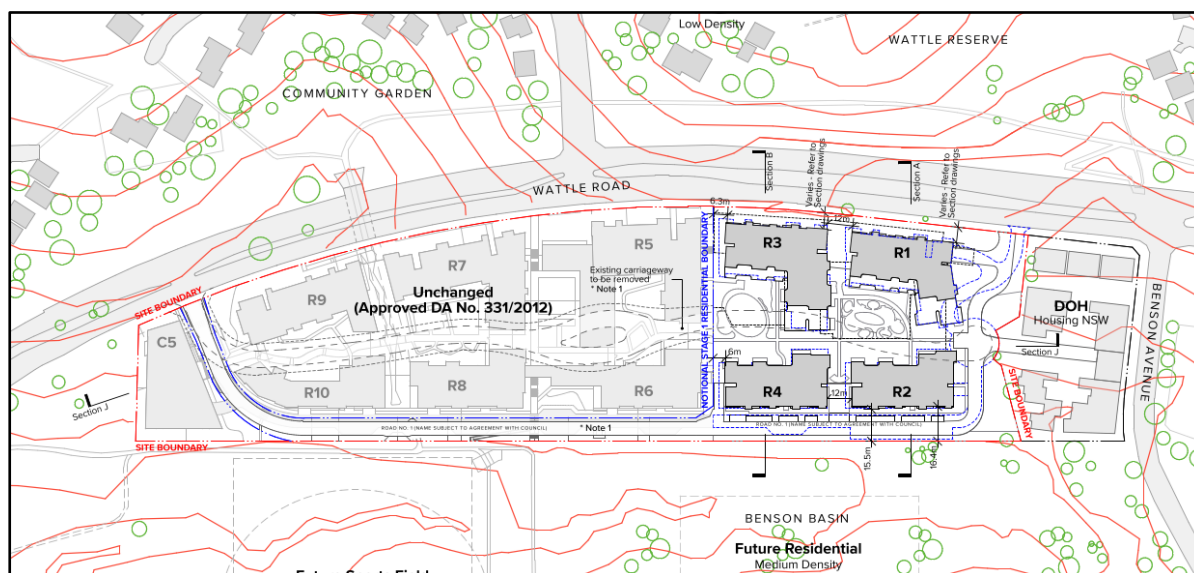
Approved Plans

Concept Approval Site Plan



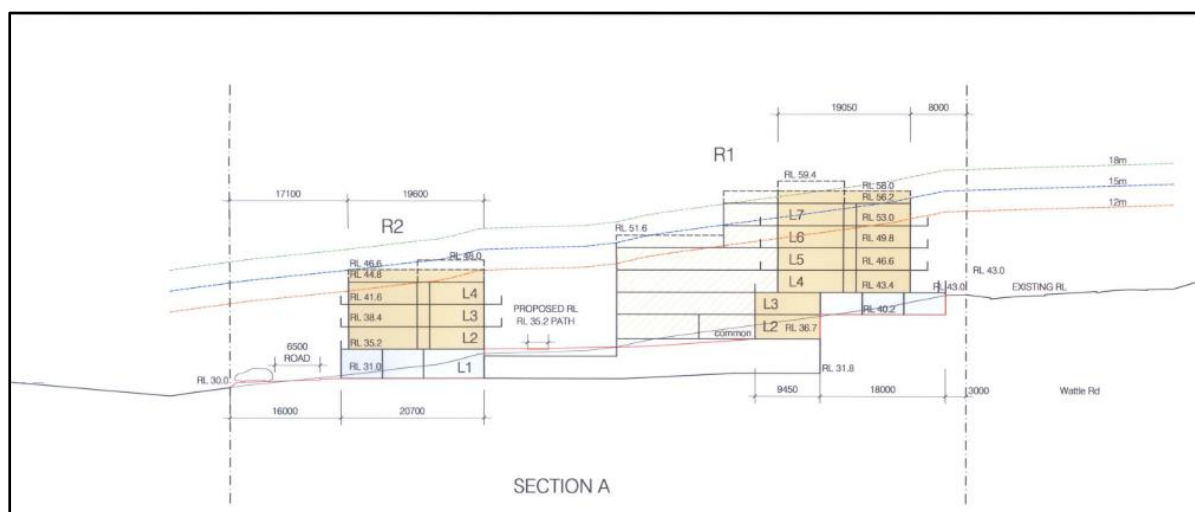
Proposed Modification Plans

Proposed Site Plan

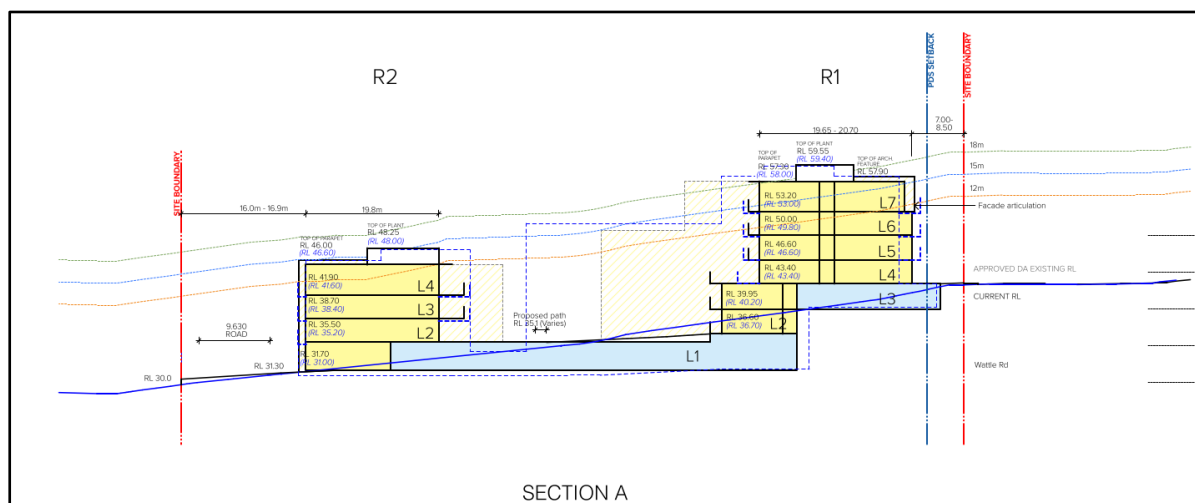


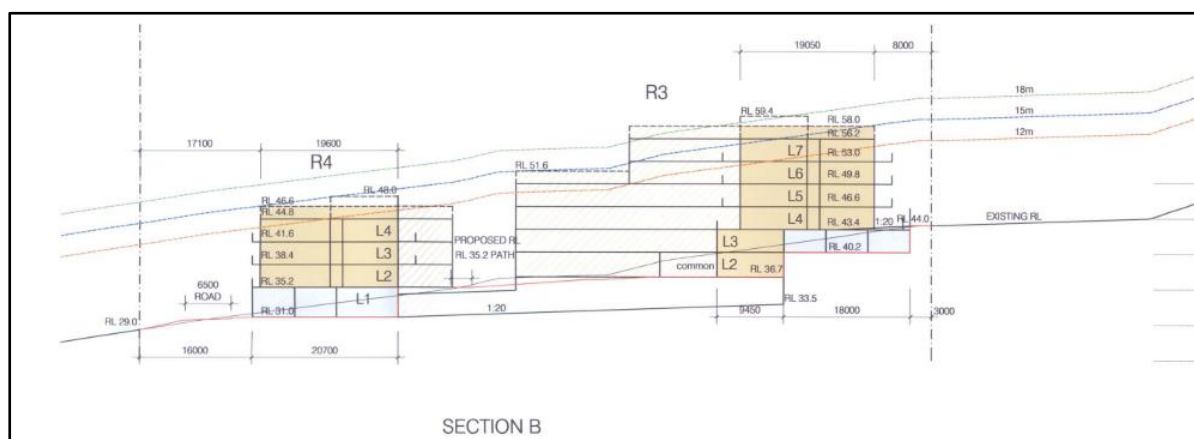
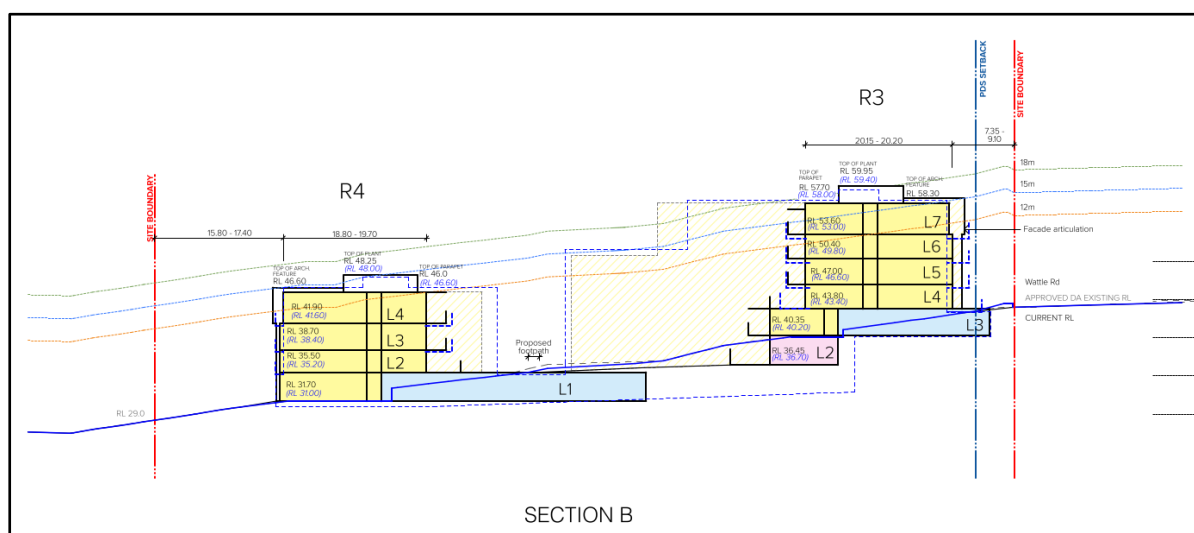
Comment: The proposed modification defines the stage 1 development area of the subject site and establishes the stage 1 arrangement, and furthermore, all subsequent proposed modification works are isolated to the stage 1 site area. The stage 1 area includes the internal access road, 'Road no.1'. Further modification applications to be lodged for later stages to create alignment in an ongoing capacity.

Concept Approval Setback - R1 and R2 Building Setback and Articulation



Proposed Setback – R1 and R2 Building Setback and Articulation



*Approved Plans***Concept Approval Setback - R3 and R4 Building Setback and Articulation***Proposed Modification Plans***Proposed Setback – R3 and R4 Building Setback and Articulation**

Comment: The approved setback design of Buildings R1 and R3, oriented toward Wattle Road presented a setback arrangement of 7m - 8m from the boundary to the residential component and reduced setback for the articulation elements, which approved a varied setback of 3m at ground floor and 5.5m at the upper levels.

The proposed modification seeks consent to impose minor amendments to the setback design of buildings R1 and R3 along Wattle Road. The proposed setback amendment along Wattle Road presents a varied setback design between 7m – 8.5m from the boundary to the residential component. In relation the articulation elements associated to Buildings R1 and R3

a varied setback is demonstrated between 3.7m – 4.2m, being responsive to the Wattle Road boundary curvature. The setback amendments remain consistent with the PDS, which outlined a 5m setback with a reduced setback for the associated articulation aspects, permitting a reduced encroachment of 2m, thus a 3m setback. The design does not encroach within the setback design principles for the site.

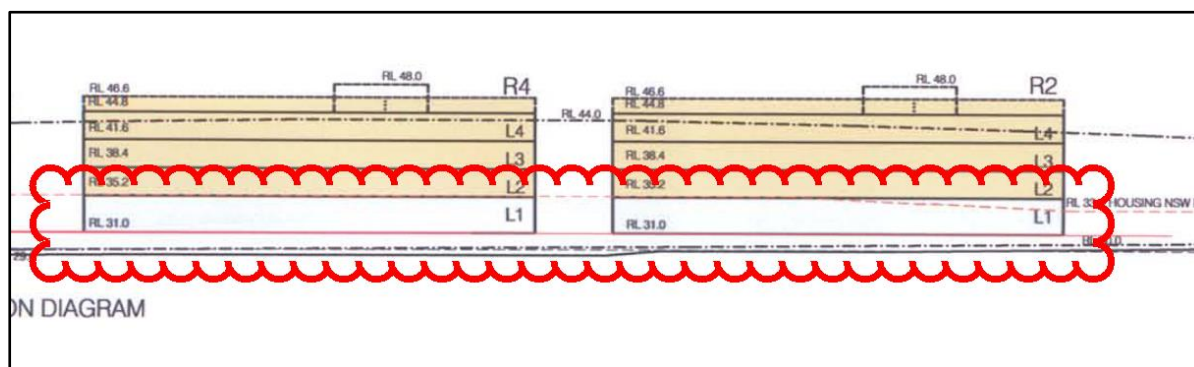
The approved setback design of Buildings R2 and R4 which are located opposite the western boundary, along Road no. 1 present a consistent setback of 17.1m from the western boundary, with an articulation setback of 15.7m and a 3m setback between the built form and Road no.1. The PDS specified a setback of 3m – 5m from the internal road.

The proposed modification seeks to amend the setback design of R2 and R4 to a varied setback arrangement of 15.8m – 16.9m from the western boundary to the residential component. The articulation aspect presents a varied setback of 14.4m – 16.3m, and the separation between the ground floor-built form arrangement and Road no.1 provides a setback of 5m.

Furthermore, the proposed modifications to the setback arrangement of the stage 1 buildings remain compliant with the parameter of the PDS.

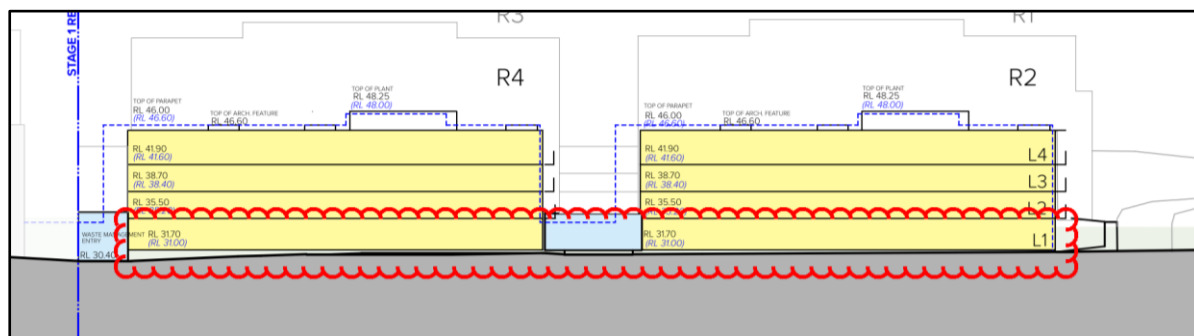
Approved Plans

Approved Finished Floor Levels of R2 and R4



Proposed Modification Plans

Proposed Finished Floor Level of R2 and R4

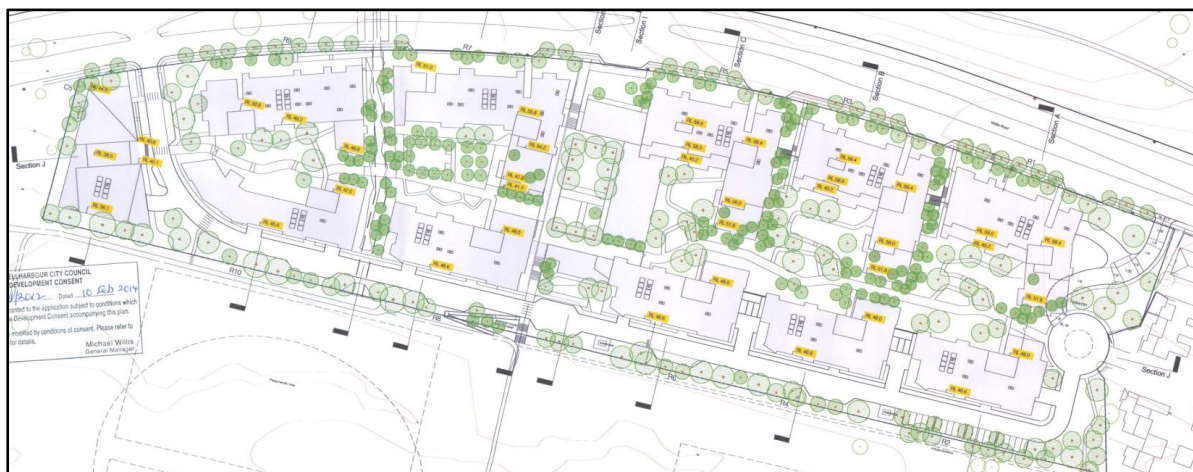


Comment: The modification seeks to increase the finished floor level of Buildings R2 and R4 by 720mm to accommodate the site flood affection, improve compliance with the Shellharbour DCP 2013 and ensure that updated flood data is taken into consideration to ensure all

habitable rooms are above the PMF + 500mm freeboard. Noting the increase in height does not exceed the maximum height of buildings.

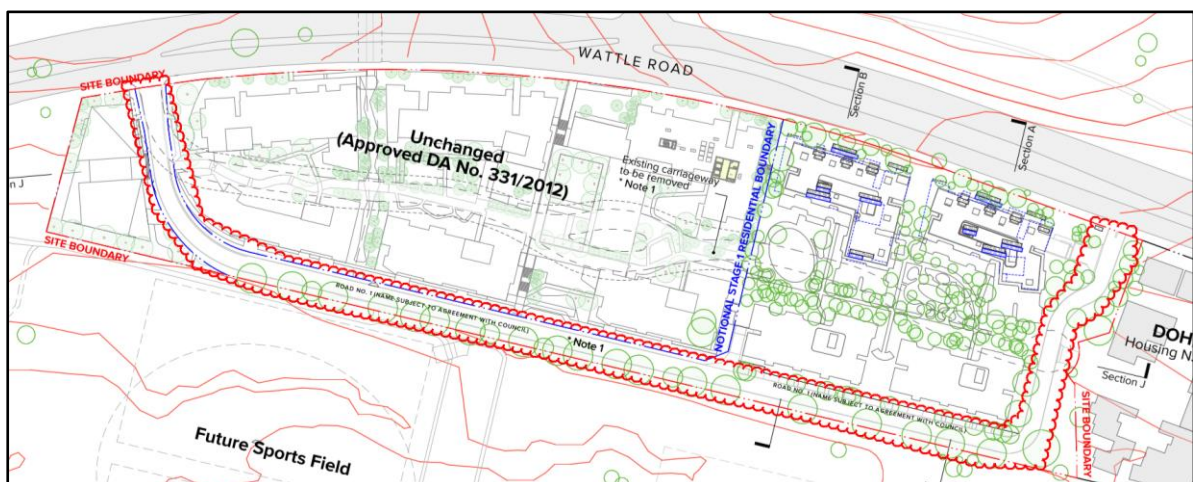
Approved Plans

Concept Approval Internal Road “Park Street” Arrangement and Boundary Landscape Design



Proposed Modification Plans

Proposed Road Realignment and Landscape Setback Design





Comment: The modification application seeks to amend the siting of the internal road. The northern aspect of the internal road remains as per the concept approval, retaining the existing driveway cross over at the northern aspect of the site along Wattle Road. The modification seeks to realign the road along the western boundary to demonstrate a consistent setback pattern of 2.8m which is parallel to the western boundary. The setback between the internal road and western boundary to be landscape space, creating a uniform landscape bed to soften and articulate the road, and retaining wall, and improving the interface with the adjoining property. The road realignment along the western boundary to create a consistent street pattern.

Secondly, the modification seeks consent to reconfigure the on-street parking associated to the Road no.1, removing the approved 20 x on-street parking spaces located at the south-western end of the road and presenting eight (8) parallel parking spaces, and two (2) dedicated drop-off bays parallel to Building R2 and R4. The parallel parking arrangement improves safety with visitors or residents accessing the on-street parking without crossing the road. Additionally, along the southern aspect of the internal road, adjacent to 15 Benson Bason, , the modification seeks to include a further two (2) drop-off bays.

The realignment of Road no.1 along the southern boundary to connect to the existing southern driveway cross over accommodates the amendment to the building envelopes of Buildings R1 and R2. The modification seeks to remove the approved roundabout and present a T-intersection, retaining access from the southern site owned by NSW Land and Housing Corporation. The removal of the roundabout has been addressed, with a traffic calming function through the introduction of a speed hump. It is noted the amendment to the driveway gradients and layout from the southern access point from Wattle Rd has been completed to demonstrate improved site gradient while achieving compliance with applicable Australian Standards, specifically with a flatter section achieved towards the southern entry and ensuring this continues for the proposed driveway access to the R1/R3 basement parking. Councils

Engineers have considered the road realignment and determined the modifications to be satisfactory.

Finally, the modification plans remove the reference of “Park Street” to “Road no. 1”, as per the notice of determination condition of consent no. 3 – Modification to the Approved Plans.

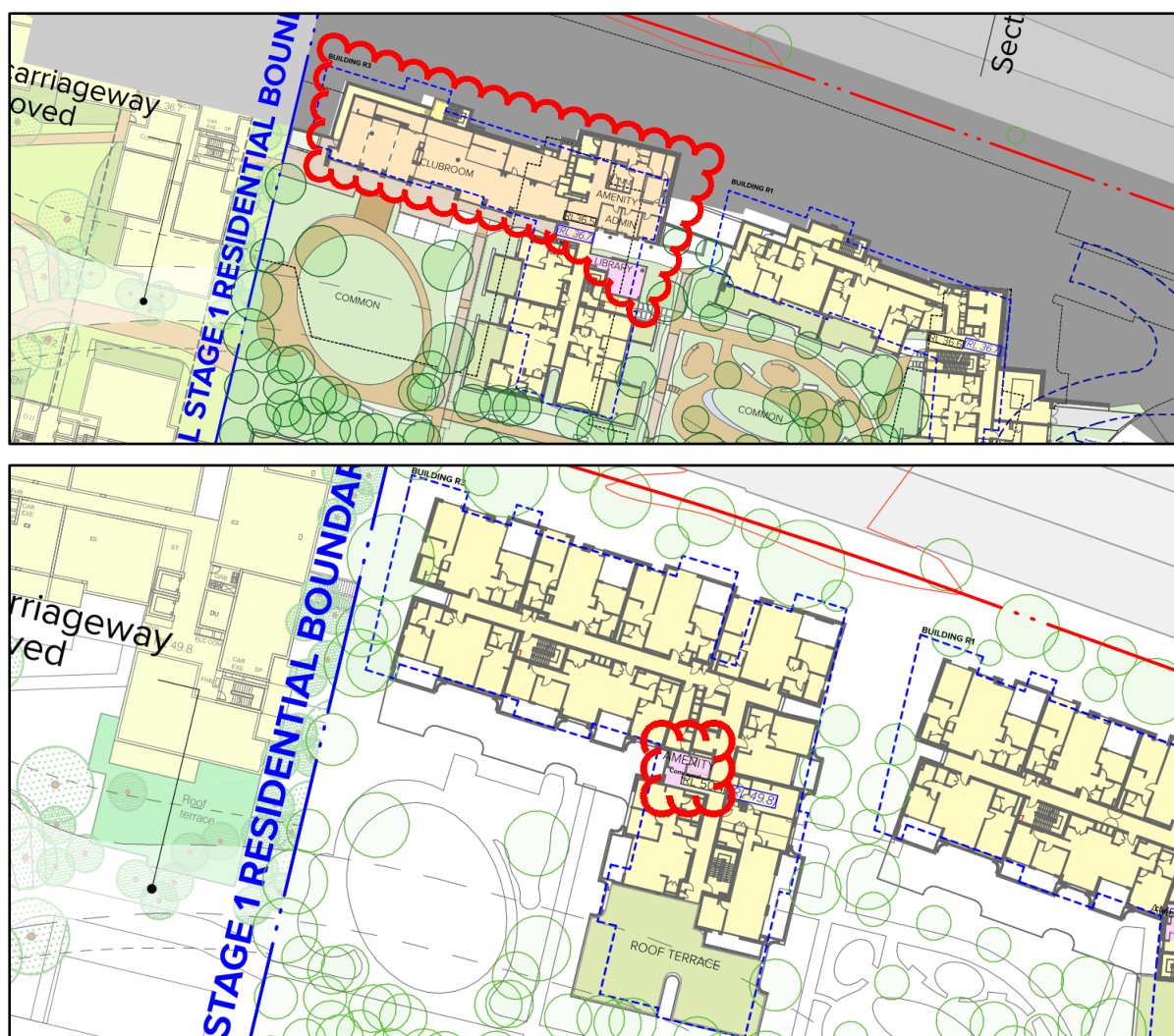
Approved Plans

Approved level 2 and level 6 floor plan of building R3



Proposed Modification Plans

Proposed level 2 and level 6 floor plan to be communal facilities located in building R3



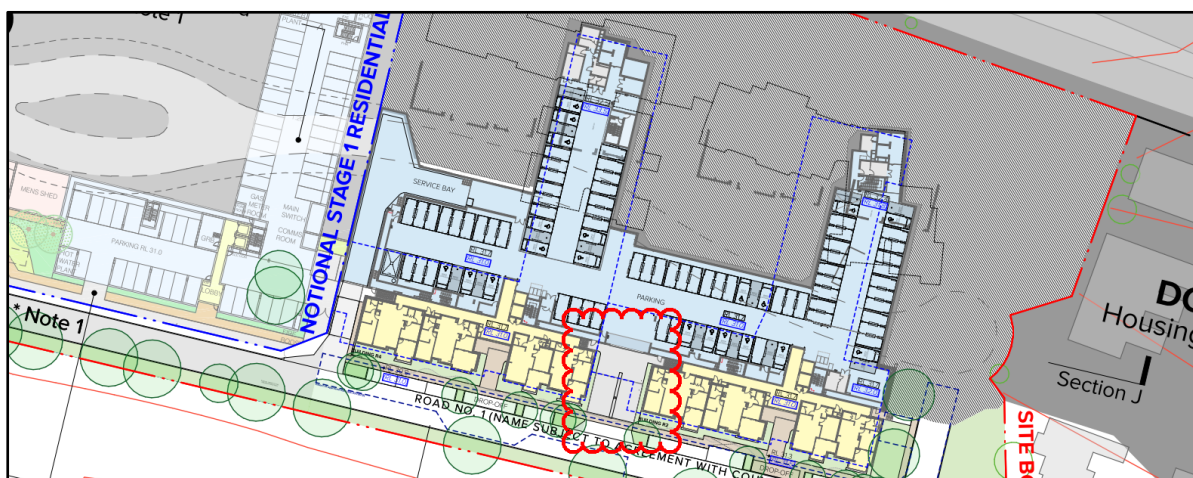
Comment: The modification application seeks consent to redistribute the communal facilities to be incorporated into Stage 1, specifically Stage 1 Building R3 level 2 and level 6. The concept approval arrangement concentrated the communal facilities and ancillary uses to buildings R5, R6, R7 and R8. The modification seeks to include communal facilities, specifically a clubroom, library, administration spaces and amenities. The overall maximum GFA of the concept development to remain as approved and the increase within stage 1 to be offset within following stages of the development. The increase in GFA within stage 1 to be 287m², which is 0.6% of the total GFA and will not impact the bulk and scale or building mass.

Approved Plans

Approved basement access and design



Proposed basement vehicle entry between R2 and R4 and Internal Waste Storage



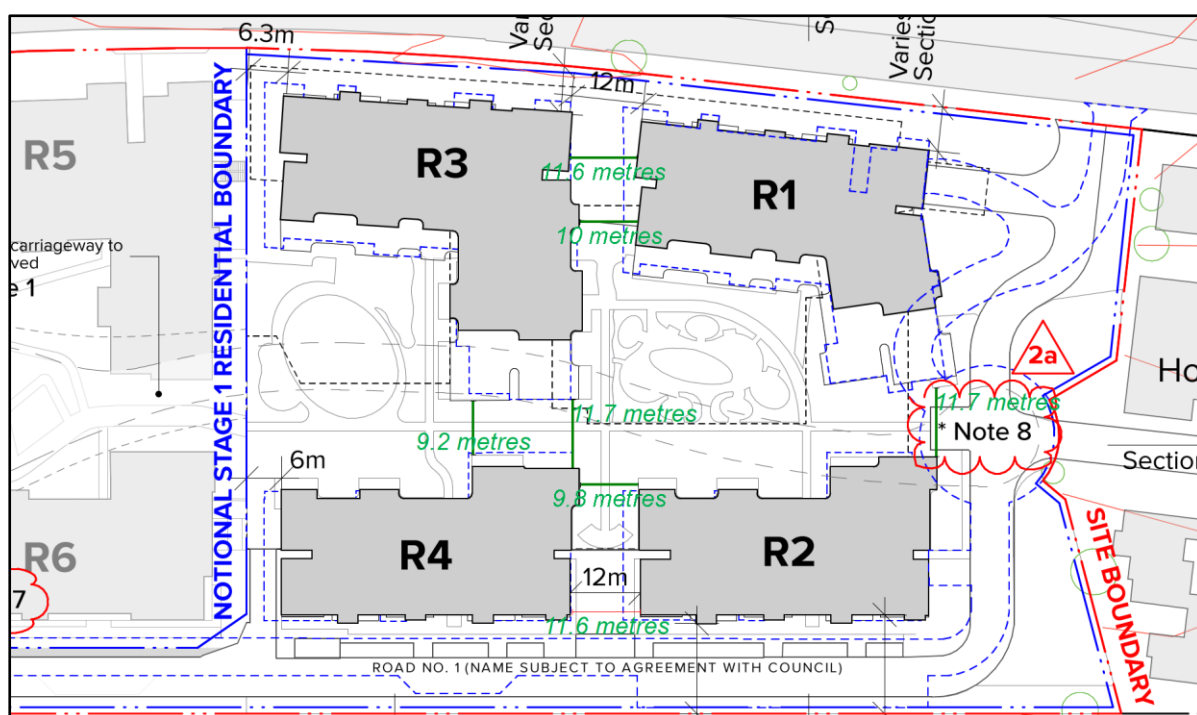
Approved Plans

Approved Site Plan and Building Envelopes



Proposed Modification Plans

Approved Site Plan and Building Envelopes



Comment: The proposed modification seeks to increase the building separation from 9m between the buildings as approved, to varied setback distances as noted in green above. In accordance with section 2F of the Apartment Design Guide (ADG) the minimum separation distances for buildings up to four storeys is 12m between habitable rooms and balconies. Full compliance with section 2F of the ADG has not been achieved, however all building separation distances have been increased from 9m as originally approved.

The aims of the building separation as stated within the AGD is to promote a high level of amenity for future residents, allowing ample opportunity for solar access and cross ventilation, and improved levels of visual and acoustic privacy. As noted in the assessment against the

provisions of the *SEPP (Housing) 2021 (Attachment C)*, the proposed modification demonstrates total compliance with clause 108 non-discretionary development standards for independent living units within the SEPP. As such the arrangement is not considered to adversely impact the amenity of the site and the liveability for future residents.

It is noted the increase in separation is considered to be an enhancement as the development parameters within the updated Instruments are considered to be more onerous than the provisions applied at the time of the original assessment. Therefore, the modification seeks to demonstrate a design which is representative of the evolved design guidelines and improve key design quality principles. The separation is deemed a satisfactory arrangement.

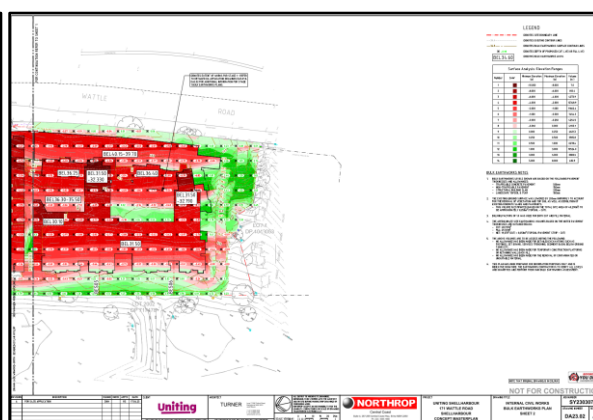
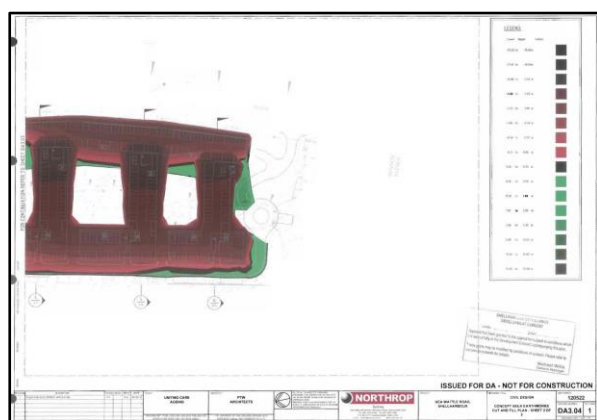
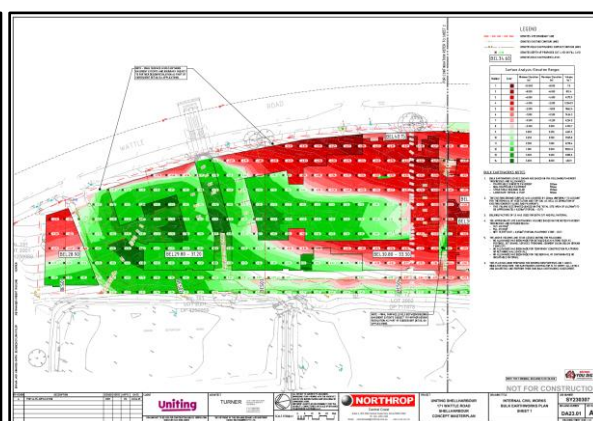
Noting the proposed modifications to the concept development remain to be broad brush and do not offer greater design detail, a comprehensive analysis of the detailed design is to be completed under the concurrent stage 1 development application DA0365/2024, whereby amendments may be imposed where amenity is compromised.

Approved Plans

Proposed Modification Plans

Approved Civil Earthworks

Proposed Civil Earthworks



Comment: The proposed modification seeks to reduce the level of earthworks associated with the basement excavation by 369m². Council Engineers have considered the design and

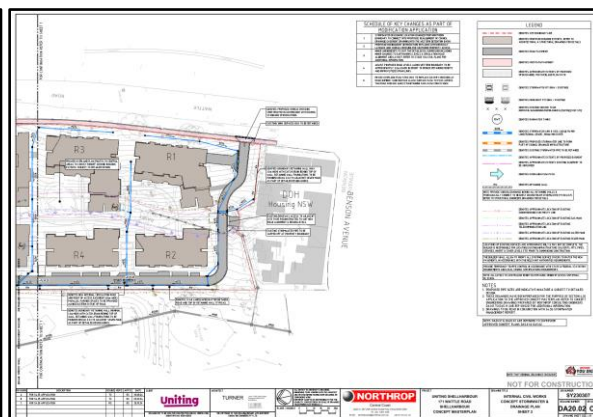
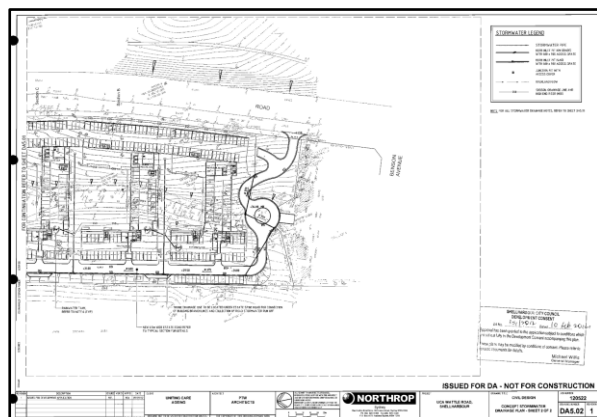
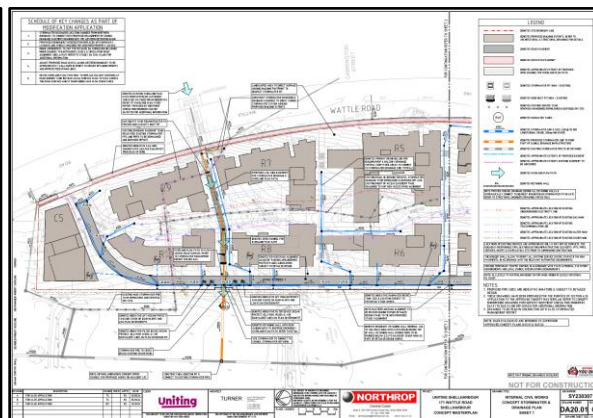
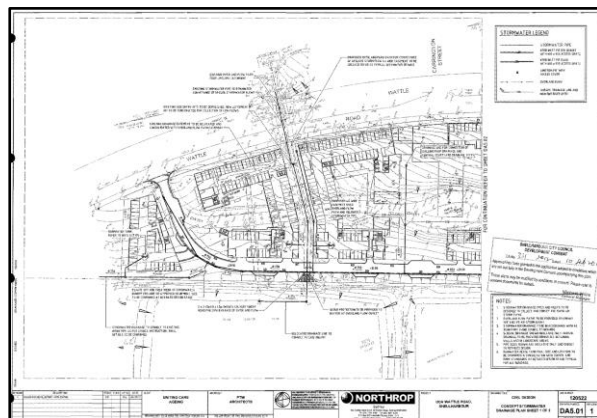
deemed a conditionally satisfactory response. Updated conditions to be imposed within the modified notice of determination.

Approved Plans

Proposed Modification Plans

Approved Civil Stormwater Design

Proposed Civil Stormwater Design



Comment: Noting the proposed modification to the conceptual design pertaining the realignment of Road no.1 and the bulk earthworks, modified stormwater drainage plans included for considered to ensure alignment within development applications for the built form. Councils Engineers have deemed the amendments to be conditionally satisfactory and will supersede the approved stormwater drainage plans as part of the concept approval.

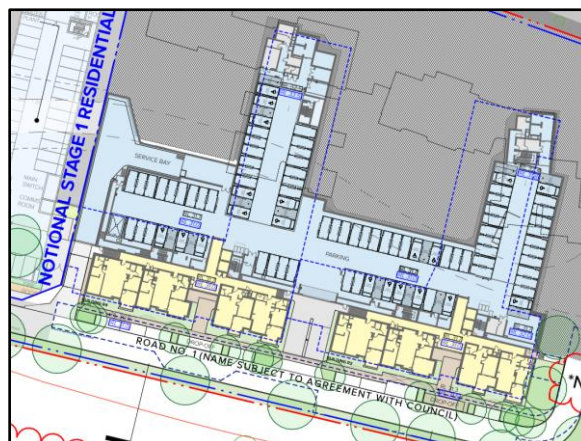
Proposed modification to car parking and independent living units within stage 1

Approved Plans

Proposed Modification Plans

Approved Level 1 Plan

Proposed Level 1 Plan



Note: 83 x basement parking spaces, 8 x on-street parking spaces and 8 x ILU

Approved Plans

Proposed Modification Plans

Approved Level 2 Plan

Proposed Level 2 Plan



Note: 24 x ILU



Note: 23 x ILU

Approved Plans

Proposed Modification Plans

Approved Level 3 Plan

Proposed Level 3 Plan



Note: 27 x ILU



Note: 66 x parking spaces and 30 x ILU

Approved Plans**Proposed Modification Plans****Approved Level 4 Plan****Proposed Level 4 Plan**

Note: 35 x ILU



Note: 37 x ILU

Approved Plans**Proposed Modification Plans**

Approved Level 5 Plan

Note: 21 x ILU

Proposed Level 5 Plan

Note: 22 x ILU

Approved Plans**Proposed Modification Plans****Approved Level 6 Plan**

Note: 17 x ILU

Proposed Level 5 Plan

Note: 16 x ILU

Approved Plans**Proposed Modification Plans****Approved Level 7 Plan**

Note 17 x ILU

Proposed Level 5 Plan

Note: 16 x ILU

Comment: The concept approval granted consent for 141 x independent living units within the R1, R2, R3 and R4 buildings and the modification seeks to define the stage 1 area, and these buildings are located within the stage 1 site. The modification application seeks to increase the units by 11 additional units which is 152 x independent living units. The increase in units by 11 within stage 1 to be offset within later stages and does not seek consent to increase the concept approval cumulative total of units for the site 352 x independent living units. The additional 11 units forms 3.1% of the overall units and is considered a minor increase.

The concept approval does not clearly indicate the total number of parking spaces that would be considered to be located within the stage 1 area of the site. Noting the conceptual nature of the approved plan it is unclear to ascertain the dedicated spaces. However, the modification plans clearly detail a total of 157 x parking spaces, which is offered within the basement and on-street parking. Total compliance with the cumulative total 456 x on-site car parking spaces is expected to be achieved and the reduction noted to be absorbed and demonstrated within later stages of the development.

Note, the parking demonstrated within stage 1 provides a surplus in total parking required in accordance with clause 108 of the *SEPP (Housing) 2021*. As such the on-site parking for stage 1 is sufficient.

Proposed Changes to Conditions

Based on the above assessment of the proposed modification to the approved concept approval, the following amendment to the conditions of consent as part of the Notice of Determination are recommended.

Table 2: Proposed Changes to Conditions

Condition No	Condition requirements	Change Proposed	Reason for Change
--------------	------------------------	-----------------	-------------------

1	Concept Approval	Updated to reference the communal facilities	Conditions to reflect the updated communal facilities
2	Approved plans and Documents	To reflect the modification to the approved plans and documentation	Modify to capture updated plans
3	Modification to the Approved Plans	The conditions to be updated to reflect the modified building envelopes	Condition to reflected the updated conceptual development scope
5	Future Development Requirements	Condition to be updated to reflect the modified development scope	Condition to reflect the updated conceptual development scope

2.2 Background

2.2.1 Concept Approval

The development application DA0331/2012 for the concept approval for the seniors housing development with ancillary non-residential development was lodged on 8 October 2012 and the proposal was subject to pre-development discussions with Council via the preparation of the Precinct Development Strategy (PDS). Determination of the concept approval on 10 February 2014.

2.2.2 Post Concept Approval

A pre-lodgement meeting was held following the determination of DA0331/2012 on 12 October 2016, prior to the lodgement of subsequent staging development applications for the concept approval. As specified within the notice of determination, condition no. 4 - Limits on the Consent; the 'consent does not authorise the components of the Concept Approval to be carried out without further approvals or consent being obtained'. As such the pre-lodgement meeting PR0075/2016 held to discuss the following;

- future staging of the seniors housing concept proposal approved by the Joint Regional Planning Panel;
- identify site facilities / infrastructure required for each stage, and;

- Identify possible planning issues and relevant documentation to be prepared.

Councils' advice included the following:

- Future stage – described the lodgement of a Stage 1 civil works development application for the earthworks, associated retaining walls and the relocation of the internal road.
- Staging Plan with ancillary services - Council requested a staging plan in which included indicative time frames and details needed as to how each stage will function to satisfy relevant statutory requirements, planning provisions and the applicable conditions of consent as per DA0331/2012.
- Pedestrian access – specified subsequent development applications to retain pedestrian access through the site and the management of such
- List of lodgement documentation required for subsequent development applications.

2.2.3 Assessment and determination of DA0120/2018

Following the concept approval determination, and associated pre-lodgement meeting, DA0120/2018 *Stage development: Earthworks for Stage One of the Site Only – Provisions of a New Road and Roundabout in Stage One with Temporary Batters and Temporary Stormwater Connection to Existing Infrastructure Beneath Road* was lodged on 20 April 2018, and development consent was issued on 12 September 2018.

Later modification applications were lodged for DA0120/2018, see detailed table below, which includes post consent certification;

Table 3: Chronology of Earthworks Development Application DA0120/2018, Modification and Post Consent

Reference No.	Development Scope	Date	Decision
DA0120/2018	Stage development: Earthworks for Stage One of the Site Only – Provisions of a New Road and Roundabout in Stage One with Temporary Batters and Temporary Stormwater Connection to Existing Infrastructure Beneath Road	12.09.2018	Approved
DAM0093/2018 (Part 2) DA0120/2018	Stage 1 – New Internal Road, Civil and Drainage Works Modify condition 8b and proposed new drainage solution	14.03.2019	Approved
DAM0094/2018 (Part 3) DA012/2018	Stage 1 – New Internal Road, Civil and Drainage Works Modify condition 5 and condition 6	14.05.2019	Approved
CC0072/2019	Stage 1 Roadway and Layback Excluding Stormwater	04.02.2019	Approved
OCC0544/2019	Interim Occupation Certificate – Footpath and driveway layback only. OCC excludes roadway and works within the allotment boundary	09.08.2019	Approved

Works associated to the concept approval are considered to have substantially commenced as per the above approvals, and DA0331/2012 is considered to be enacted and the

development consent has not lapsed under section 95 of the *Environmental Planning and Assessment Act 1979*.

2.2.4 Pre-lodgement Meeting – PR0026/2023

A second pre-lodgement meeting PR0026/2023 was held 22 August 2013 to discuss a modification application to DA0331/2012 and the detailed design and built form of the stage 2 portion of the seniors living development at subject site, noting stage 1 pertains to earthworks. The pre-lodgement meeting discussed the following:

- proposed Section 4.55(2) modification to DA0331/2012 and concurrent staged development for the construction of seniors living and associated works;
- proposed changes to the concept approval, specifically the building envelopes;
- applicable planning controls and determination authority for subsequent applications;
- commentary and feedback on built form architectural design; and,
- lodgement documentation for proposed modification and later development application.

Council's advice included the following:

- no objection to the principle of the proposed section 4.55(2) and concurrent development application for the stage 2 development for seniors independent living units as per the concept approval, and expressed both applications to be determined by Southern Regional Planning Panel in accordance with *State Environmental Planning Policy (Planning Systems) 2021*;
- furthermore, section 4.55(2) and stage 2 application to be referred to the Design Review Panel (DRP) for review and the meeting to be held prior to lodgement of relevant applications;
- the proposed modifications to the concept approval generally supportive as it was identified to result in an improve alignment with update planning provisions and controls, specifically the Apartment Design Guide and demonstrate a generally consistent design; and
- list of lodgement documentation required for subsequent development applications.

2.2.5 Design Review Panel

Design Review Panel DRP0005/2023 held to discuss the subject modification application, and concurrent development application for the stage 1 development for seniors living. The meeting was held on 30 October 2023 and the elected DRP panel members were generally supportive of the overall design and associated modifications to the concept approval. Furthermore, the panel commended the Proponent for the improved alignment demonstrated through the discussed applications with reference to the updated planning provisions, and design guidelines.

2.2.6 Assessment of DAM0146/2024

The proposed modification application was lodged on 14 January 2025. 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
14 January 2025	Modification application lodged.

5 February 2025	Modification Application referred to external agencies.
13 February 2025	Public exhibition of the Modification Application commences.
12 March 2025	SRPP Panel briefing.
12 March 2025	Public exhibition of the modification application concludes. Nil submissions received.
19 March 2025	Internal referral meeting held between relevant Council departments to discuss
31 March 2025	Request for Information from Council to Proponent (CI 104 of the EP&A Regulations 2021), which requested the following information: <ul style="list-style-type: none"> • amendments to the staging boundary, specifically the impact upon the basement car parking design of Building R1 and R3, and the design of the basement design with future stages; • bulk earthwork design and documentation to demonstrate the interaction between the stage 1 plans associated to concurrent development application (DA0365/2024) and remaining conceptual plans; • justification of the proposed amendment and realignment of the internal access road; and • further detail pertaining to the retaining wall along the western and southern boundary interface and further consideration required in relation to the impact and presentation.
8 April 2025	Meeting between Proponent and Council to discuss RFI letter from Council.
16 April 2025	Site visit with the SRPP panel members.
<u>23 April 2025</u>	Proponent submitted amended plans including the following: <ul style="list-style-type: none"> • Bulk Earthwork Civil Plans • Stormwater Drainage Civil Plans • Amended Modification Architectural Plans • Traffic Report • Letter to Homes NSW
14 May 2025	SRPP Determination Meeting

Note: Concurrent development application DA0365/2024 for the *Demolition of existing structures, construction of four residential flat buildings with 152 independent living units, provisions of a clubroom and library, two levels of basement parking, associated landscaping and a new road* was lodged on 21 January 2025 and pertains to the stage 1 development associated to the concept approval and subject section 4.55(2) modification application.

3. STATUTORY CONSIDERATIONS

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

3.1 Section 4.55(2) 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:

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

Comment:

The proposed changes do not substantially alter the approved concept development in that the land is still to be used for seniors living and ancillary non-residential uses. The range of modifications proposed to the concept approval demonstrate an improved alignment with regard to the updated planning legislation and provisions. Furthermore, the proposed modification demonstrates and creates enhanced definition to the concept approval to promote consistency between stage 1 and the concurrent development application DA0365/2024.

The evaluation of the proposed modification to determine whether it is in fact 'substantially the same' consideration of subject amendment in qualitatively and quantitatively. This logic is drawn from *Moto Projects (No.2) Pty Limited v North Sydney Council* [1999] NSWLEC 280; (1999) 106 LGERA 298, where Bignold J described the process as follows:

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.

Quantitative Assessment

The proposed modification seeks to amend the number of dwellings, parking spaces, gross floor area, setbacks, building heights, communal facilities and building separation. The following consideration is discussed below:

- The overall GFA for the conceptual development remains as approved at 45,800m². However, the modification seeks to increase the GFA within the stage 1 portion of the site by 287m², noting the later stages of the concept development to offset such redistribution of GFA. Therefore, the cumulative total remains compliant and consistent with the approved GFA. The proposed GFA within the stage 1 part of the development represents 38% of the total GFA for the site, and the additional GFA is 0.6% of the overall development. The increase is considerably minor in nature. Updated conditions are recommended within the modified notice of determination to ensure compliance.

- The modification seeks to increase the number of independent living units available within the stage 1 part of the development by 11 units. The increase in units results in a total of 152 x units within stage 1, which is consistent with the provisions of the concept development which permitted a maximum of 352 units within the whole development scope. Therefore, the offering of units within stage 1 does not contravene the total number of units permitted and the remaining 200 x units are to be provided within later stages of the development.
- The proposed modification application seeks to reduce the available on-site parking located within the stage 1 area of the site, reducing the total number of spaces by 9. The overall car parking remains as per the approved 456 x spaces, and the later stages of the development are expected to absorb the reduction within stage 1. The modification demonstrates 157 parking spaces within the stage 1 area, notably which exceeds the numerical parking rate requirements specified within both the *SEPP (Housing) 2021* and Chapter 13 of the Shellharbour DCP 2013. The modification to reduce the parking numbers does not alter the overall development and provides a surplus in parking with regard to other planning provisions.
- The setback design seeks to reduce the setbacks from the corresponding boundaries, however in relation to the specified setback controls within the PDS, the arrangement demonstrates a compliant arrangement and pattern.
- The building height is considered to be in accordance with building height provisions approved via the original concept development, which outlined the maximum height being 20m inclusive of roof plant. The maximum height measured within the proposed modification is 19.8m which is consistent with permitted height as per the original assessment. Notably, in conjunction with the maximum height the concept approval outlined the building profile in reference to the storeys observed from the public domain and adjoining properties, which remains to be consistent with the concept approval. The storey presentation from Wattle Road and the Western boundary is four (4) storeys, with stage 1 buildings R1 and R3 demonstrating an additional two storey (2) internal to the site. Furthermore, the increase of the building height driven by the flood affection and improvement in design along the Wattle Road interface. The increase in height offers improved consideration to the sites natural constraints and streetscape appeal.
- Furthermore, the increase in building height is driven by the flood affection, increasing the finished floor level of Buildings R2 and R4 by 720mm. Such increase as defined above does not alter the maximum height of buildings at 20m.
- The communal space was consolidated within Buildings R5, R6, R7 and R8 as part of the concept approval. The modification, however, seeks to redistribute a portion of the communal space into stage 1, specifically Building R3. The inclusion of communal space improves the alignment with the *SEPP (Housing) 2021*, whereby ancillary services are offered within the site that are proportional to support the primary use. The redistribution of communal spaces also improves the amenity of the stage 1 development.
- Building separation is proposed to be amended, increasing the separation between the buildings from 9m to varied distances between 9.2m – 12m to comply with the evolved provisions within the ADG. The proposed modification does not present total alignment with section 2F of the ADG, however the increase in building separation is considered an improvement and through an assessment of the detailed design, mitigation measures can be imposed through revision of the built form.

The proposed modification retains alignment with the development's quantitative parameters, merely redistributing the numerical cumulative totals that pertains to the development. As detailed, the cumulative total described remains to be achieved and conditions to be preserved to ensure alignment and compliant is ensured through subsequent modification applications, and concurrent development applications.

Qualitative Assessment

In relation to a qualitative assessment, the proposed modification demonstrates amendments to create the defined stage 1 area, road realignment, basement reconfiguration and earthworks associated to the basement design and amendments to key design principles of the ADG.

- The modification allows for definition of the stage 1 area of the site. The further demonstrated modifications are associated to the stage 1 development scope and are isolated the stage 1 area.
- The road realignment creates a parallel street pattern with a consistent setback along the western boundary. The refinement of the internal access road creates a uniform street pattern within the site, in turn provides a consistent landscape bed width of 2,8m between the western boundary and road. The road realignment reduced the available on-street parking from 20 to 8 spaces; however, the parking design is consistent with a typical street pattern, removing the cluster parking located within the south-west corner to integrated parallel parking on the eastern side of the road. The on-street parking arrangement improve safety and connective for pedestrians and road user, reducing the need for crossing the road to access the R2 and R4 buildings. Drop off bay are also included within the modification scope in association with the internal road redesign. The road along the southern boundary removes the roundabout access with a T-intersection and straighten the road to improve site functionality and accommodate the amendments to the building envelopes.
- The road realignment demonstrates a single access into the basement associated to R2 and R4, located centrally between the building envelopes, removing the multiple access points originally approved only the west and southern aspect.
- The level of excavation associated to the basement development has been reduced by 369m². The basement split level design is retained.
- The internal access road through the site had been referred to as Park Road or Park Street throughout the original assessment which is to be amended to be referenced as 'road no.1'.

The proposed modifications demonstrate a general consistency between the original development and amendments are therefore identified to be substantially the same. The cumulative totals remain preserved through the offset in later stages. Overall, the modification presents a compliant design with the approved key development principles specified and approved under the concept development application.

- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has*

not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and

Comment:

The original DA did not require concurrence or general terms of approval from any external agency.

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

Comment:

The application was notified in accordance with Shellharbour Council's Community Participation Plan 2021. No submissions were received.

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

Comment:

The modification application was notified between 13 February 2025 and 12 March 2025 and no submissions were received.

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

Comment

The matters required to be considered include the consideration of matters under Section 4.15(1) of the EP&A Act, which are considered below in Section 3.2 of this report.

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.*

3.2.1 **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.

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

The following Environmental Planning Instruments are relevant to this application

- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy No. 55 Remediation of Land*
- *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*
- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Housing) 2021*
- *Shellharbour Local Environmental Plan 2000*
- *Shellharbour Local Environmental Plan 2013*
- *Shellharbour Development Control Plan 2013*
- *Uniting Care Ageing Precinct Development Strategy (PDS)*

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.

Note: the modification application to be assessed under the current gazetted Environmental Planning Instruments as the enforcing guiding instruments. However, consideration of the repealed instruments that were applicable at the time of the original determination have been undertaken as part of this assessment.

Table 5: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration (Brief summary)	Comply (Y/N)
State Environmental Planning Policy (Planning Systems) 2021	The original development application was determined by the Joint Regional Planning Panel (JRPP) pursuant to Part 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 as the development application Capital Investment Value proposed at \$119,000,000.	Yes

	<p>Since the determination of the concept approval, the <i>SEPP (Planning Systems) 2021</i> has been gazetted and in accordance with the provisions of the instrument, the subject modification application is declared as regionally significant development as per Clause 3 of Schedule 6 of <i>SEPP (Planning Systems) 2021</i>. The proposed modification is reliant upon connection to Council drainage infrastructure located within the immediately adjoining site 191 Wattle Road, Shellharbour City Centre, Lot 2001 DP 1250959, henceforth is considered to be Council related development over \$5 million.</p>	
State Environmental Planning Policy (Infrastructure) 2007	<p>The original development was assessed under the <i>SEPP (Infrastructure) 2007</i> which was since been repealed, and superseded by the <i>SEPP (Transport and Infrastructure) 2021</i>.</p> <p>The considered requirements under the referenced instrument remains consistent and that a referral to Transport for NSW (TfNSW) was issued for the subject modification application as per s2.122 of the <i>SEPP (Infrastructure) 2021</i>. This remains consistent with the relevant legislation and aligns with the original development assessment, whereby under Clause 104 of <i>SEPP (Infrastructure) 2007</i> the development classified as traffic generating development and a referral to Roads and Maritime Services (RMS).</p> <p>TfNSW raised no objection to the proposed modification, as it is not expected or to result in changes to the traffic generation through the alignment and consistency between the proposed modifications and approved conceptual development and design.</p>	Yes
State Environmental Planning Policy No. 55 Remediation of Land	<p>The original development was assessed under the <i>SEPP No. 55 Remediation of Land</i>; however, the modification application is to be assessed under the gazetted planning instrument being the <i>SEPP (Resilience and Hazards) 2021</i> which has superseded the <i>SEPP No.55 Remediation of Land</i>.</p> <p>The proposed development remains consistent with the assessment completed. A geotechnical investigation submitted within the original assessment concluded that the site presented no signs of contamination. The site has remained vacant since the approval of DA0331/2012, with no evidence of contamination. Furthermore, Council's contamination mapping does not indicate evidence of contamination on the land. The concurrent development application pertaining to detailed design of the stage 1 development of seniors living to include the relevant conditions included.</p>	Yes

<p>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</p>	<p>Assessment against the <i>SEPP (Housing for Seniors or People with a Disability) 2004</i> is included within Attachment B of this assessment report.</p> <p>Council concludes a satisfactory assessment in relation to the provisions specified within instrument, specifically Chapter 3 Development for senior living. The proposed modification remains consistent and does not demonstrate an inconsistent modification scope. The proposed modification remains consistent with the original assessment.</p> <p>Noting, the <i>SEPP (Housing for Seniors or People with a Disability) 2004</i> has since been repealed and superseded by the <i>SEPP (Housing) 2021</i>, the modification application to the concept approval remains to be assessed under the savings provisions contained within Schedule 7A Savings and transitions provisions of the <i>SEPP (Housing) 2021</i></p> <p>1. General savings provisions <i>(1) This policy does not apply to the following matters-</i> <i>(d) a development consent granted on or before the commencement date</i></p> <p>Note: to ensure a consistent development between the subject modification application and concurrent development application pertaining to stage 1, consideration of the <i>SEPP (Housing) 2021</i> has been completed to ensure alignment and future compliance.</p>	<p>Yes</p>
<p>State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development</p>	<p>The original development was assessed and considered under the provisions of the <i>SEPP No. 65 Design Quality of Residential Flat Development</i>. This instrument was repealed with the gazetting of the <i>SEPP (Housing) 2021</i>.</p> <p>The assessment criteria under the Apartment Design Guidelines have been included within the <i>SEPP (Housing) 2021</i>, which have been considered within this assessment and included within Attachment C and Attachment D.</p>	<p>Yes</p>
<p>State Environmental Planning Policy (Housing) 2021</p>	<p>As noted, the savings provisions contained within Schedule 7A of the <i>SEPP (Housing) 2021</i> pertain to the concept approval and subject modification application, however do not apply to the concurrent detailed design stage 1 application DA0365/2024.</p> <p>To demonstrate alignment between the subject modification and stage 1 development application, the provisions of the <i>SEPP (Housing) 2021</i> have been considered within the assessment of the modification application. Noting the correlation between the subject</p>	<p>Yes</p>

	<p>modification application and concurrent stage 1 application, an assessment against the SEPP is included to ensure alignment between the development applications, see Attachment C.</p> <p>This modification application does not alter compliance with Part 5 Housing for seniors and people with a disability, and Chapter 4 Residential apartment development. An assessment of these provisions is included within Attachment C.</p>	
Illawarra Regional Environment Plan No.1 (Deemed SEPP)	This instrument has since been repealed since the original application determination. The modifications proposed to the concept approval remain consistent with the original assessment.	Yes
Shellharbour Local Environmental Plan 2000	The concept development was approved under the <i>Shellharbour LEP 2000</i> and remains consistent with the provisions under this legislation. The SLEP 2000 has since been repealed by the SLEP 2013.	Yes
Shellharbour Local Environmental Plan 2013	The concept development has been considered against the provisions of the <i>Shellharbour LEP 2013</i> ; however, it is noted the concept approval prevails where there are inconsistencies with clause 4.3 and 4.4. The key design principles of maximum building heights and gross floor area have been defined within the concept development application.	Yes
Shellharbour Development Control Plan 2013	<p>The original assessment was not considered against the provisions of the Shellharbour DCP 2013 as it had not been endorsed. To ensure consistency between the subject modification application, concurrent stage 1 development application and later stages of the concept development. An assessment of the applicable chapters of the Shellharbour DCP 2013 has been undertaken and present a consistent modified development scope.</p> <p>The relevant chapters are detailed within section 3.2.1 (c) below.</p>	Yes
Uniting Care Ageing Precinct Development Strategy (PDS)	The subject site is identified with Chapter 7 of Shellharbour DCP as Precinct M Eastern Residential – Wattle Road. A Precinct Development Strategy for Precinct M was approved on 15 May 2012 and remains applicable, being the Uniting Care Precinct Development Strategy (PDS), Precinct M – Eastern Residential/Seniors Living. As per the conceptual approval, the proposed modification general remains consistent with the PDS.	Yes

	The proposed modification remains consistent with the development principles within the PDS and the original concept approval.	
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State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

The original development application was declared to be regionally significant development in accordance with Part 3 of Schedule 4A of the *Environmental Planning and Assessment Act 1979*, as the proposed development proposed a Capital Investment Value of \$119,000,000. The original development application was determined by the Joint Regional Planning Panel.

The proposed modification is declared *regionally significant development* pursuant to Section 2.19(1) and Clause 3 of Schedule 6 of the *SEPP (Planning Systems) 2021* as the proposal is development for council related development with a cost exceeding \$5 million. Accordingly, the Southern Regional Panel is the consent authority for the application. The proposal is consistent with this Policy.

In conjunction with the above referenced planning provisions, in accordance with 'Sydney District and Regional Planning Panels Operation Procedures' dated September 2022 requires panels to determine applications to modify development consents that are regionally significant as per section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, whereby development for which Council is the applicant or landowner. The proposed modification is reliant upon Council stormwater drainage infrastructure and connection to the drainage basin, which is located within Council owned land.

Henceforth, the modification application referred to the Southern Regional Planning Panel for determination, which is accompanied by recommendations within this report.

State Environmental Planning Policy (Infrastructure) 2007

The original development was assessed under the *SEPP (Infrastructure) 2007* which was since been repealed, and superseded by the *SEPP (Transport and Infrastructure) 2021*.

As per section 2.122 Traffic-generating development of the *SEPP (Infrastructure) 2021*, the application was referred to Transport for NSW (TfNSW). TfNSW raised no objection to the proposed modification, as it is not expected or to result in changes to the traffic generation through the alignment and consistency between the proposed modifications and approved conceptual development and design.

State Environmental Planning Policy No. 55 Remediation of Land

The original development was assessed under the *SEPP No. 55 Remediation of Land*; however, the modification application is to be assessed under the gazetted planning instrument being the *SEPP (Hazard and Resilience) 2021* which has superseded the *SEPP No.55 Remediation of Land*.

Council records do not indicate any historic use that would contribute to the contamination of the site and the land is not identified as being contaminated on Council mapping. No concerns are raised in regard to contamination as relates to the intended use of the land and the requirements of Chapter 4. Within concurrent stage 1 development application the relevant conditions to be imposed.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The proposed modification remains consistent with the provisions of the *SEPP (Housing for Seniors or People with a Disability) 2004*, as the proposal remains consistent with the approved conceptual development for seniors living with non-residential ancillary uses. The modification remains aligned with the original approval offering 352 x self-contained independent living units dedicated for seniors housing. Furthermore, the arrangement of the independent living units in the form of residential flat buildings is also consistent with the concept approval. This remains compliant with clause 10 and 13 of the instrument.

The proposed modifications included within the scope of the application do not contravene from clause 26 as the location and access to facilities remains consistent. The site is well connected to the Shellharbour City Centre Town Centre (within a 150m walking distance) and the gradients of the paths of travel through the site to be considered with the concurrent stage 1 development application DA0365/2024.

The design principles of clause 33 'neighbourhood amenity and streetscape' demonstrate consistency between the modification application and concept approval. Noting the concept approval specified the maximum height of buildings, setbacks and storeys, the modification remains compliant with maximum height distance and permitted storeys, and the setbacks remain compliant with the PDS. Similarly, the increase in the building heights and setbacks are not expected to compromise the amenity or streetscape as the modifications remain aligned with the PDS. The appearance and impact upon the public domain is consistent with the original assessment and the increase height for the architectural roof form and façade articulation through the reduced setbacks is deemed a positive outcome. The modification remains complementary and sympathetic to the site's natural topography through the stepped nature of the building envelopes.

With consideration of clause 34 visual and acoustic privacy, the increase in building separation is considered to be an enhancement and improvement with regard to visual and acoustic privacy. Furthermore, the amendment to the building envelopes improves solar access, thus enabling greater solar access to the independent living units henceforth demonstrating improved compliance with clause 35 solar access and design for climate, and clause 50 Standards that cannot be used to refuse development for self-contained dwellings.

Notably, clause 50 has been considered, however the modification remains consistent with the original assessment and the concept approval prevails. The following is noted:

- Building heights – the modification proposes a maximum height of 19.8m which is consistent with maximum height permitted under the concept approval 20m.
- Density and scale – the original assessment was not bound to an FSR provision under the applicable instrument, *SLEP 2000*, however the PDS developed and endorsed a recommended FSR of 1.1:1. The FSR approved was 1.07:1, being a maximum gross floor area of 45,800m². The subject modification does not exceed the maximum GFA.
- Landscape area and deep soil area – the original assessment recommended compliance with the standards. The modification application demonstrates compliance with both design aspects.
- Solar access - 50.1% of independent living units within stage 1 to receive 3 hours of continuous solar access, which is deemed an improvement as the concept approval demonstrated that only 48.9% of units within the stage 1 were demonstrated to receive 3

hours of solar access. Wholistically, the original assessment demonstrated 56.6% of the total 352 x units would receive 3 hours of solar access. The proposed modification demonstrates improvements to the cumulative total, as 58.9% of the total 352 units to receive 3 hours of solar access. Notwithstanding that, the concurrent stage 1 development application DA0365/2024 and all later stages of the concept approval to be assessed on the *SEPP (Housing) 2021*, which outlines 70% of units to received 2 hours of solar access, which the proposed modification scope demonstrates full compliance. Henceforth, the solar access refinements are deemed a substantial improvement and are consistent with the evolved instruments.

- Private open space – acknowledging the POS of the independent living units was not considered under the original assessment, a preliminary assessment of the concurrent stage 1 development application DA0365/2024 demonstrates that all 152 units comply with the minimum POS size and depth requirements.
- Parking – the modification application seeks to redistribute the parking. The modification seeks to reduce the parking located within stage 1 by 9 x parking spaces. The cumulative total 465 x parking space to be collectively delivered through the absorption of the 9 spaces in later stages. Notably, the parking rate specified under subject clause is 70.4 spaces for 352 x independent living units, as such the parking requirements of the concept approval demonstrate a surplus in parking.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

Within the original assessment of the concept development application, SEPP 65 was applicable and considered to adequately assess the ten (10) residential flat buildings, (noting a total of 11 building are included within the concept DA, one being the dedicate place of worship building) proposed within the concept development. Noting the repeal of SEPP 65, and the nature of the proposed modification in which promote alignment with the gazetted *SEPP (Housing) 2021*, which absorbed the prior provisions for Residential Flat Development, and refer to the current ADG, it is noted a complete assessment of the SEPP 65 is not required.

Notwithstanding that, it is noted the proposed modification to the building envelopes, specifically the building heights and setbacks, which is inclusive of the articulation aspects are consistent with design consideration of the original assessment. A condition, condition 3(c) was included within the notice of determination to increase the 4th and 5th level setback of building R1, R3, R5, R7 and R9 to align with SEPP 65, however this condition to be amended to remove reference of R1 and R3 to remain consistent with the modified setback arrangement. Noting the setback arrangement proposed within the modification application is consistent with the provisions specified within the PDS. Finally, the setback design demonstrated within modification application is complementary to the AGDs.

State Environmental Planning Policy (Housing) 2021

As detailed within **Table 1** the modification proposed under the concept approval is subject to the benefit of Schedule 7A (2) of the *SEPP (Housing) 2021*. Notwithstanding that, the subsequent development application lodged under the concept approval for the development of the built form are not benefited by Schedule 7A Saving and transitional provisions. Therefore, to ensure uniformity between the modification application and related stage 1 development application DA0365/2024, an assessment of the *SEPP (Housing) 2021* forms part of the assessment framework.

The modification application demonstrates consistently with Part 5 Housing for seniors and people with a disability. The modification does not amend the approved land use being seniors housing, which is permitted as the site is zoned R3 Medium Density Residential. Furthermore, the site is consistent with clause 84 development standards – general and is a satisfactory site for the proposed independent living for seniors.

The modification is consistent with Division 4 site-related requirements, which replaces Part 2 of the *SEPP (Housing for Seniors or People with a Disability) 2004*. The site is well located to existing facilities and services, and public transport networks, additionally, the modification does not alter the permitted non-residential ancillary land uses that are included to complement the on-site offering to future residents.

The proposed modification is consistent with the development standards outlined within Clause 108 Non-discretionary development standards for independent living units. The development standards specified within clause 108 are generally consistent with the repealed clause 50 of the *SEPP (Housing for seniors of People with a Disability)*. A comparative analysis of the referenced clause has been completed and noting minor difference between the clauses, the below development standards have been updated within clause 108 and noted;

- Landscape area – to be the lesser of 35m² per dwelling or 30% of the site, of which is 35m² per dwelling being 12,320m² for the entire concept approval site, as calculated on 352 independent living units. Within the stage 1 area of the site, the modification demonstrates a landscape area of 6370m², which form 51.7% of the required landscape space for the whole concept approval. Therefore, acknowledging the staging plan of the concept approval, total compliance is anticipated in a wholistic sense as over half of the landscape are is delivered within stage 1.
- Solar access – at least 70% of the dwelling to receive 2 hours of solar access. Refinements to the development standards have reduced the solar access requirements from 3 hours to 2 hours. The proposed modification demonstrate 109 units will receive 2 hours of solar access, thus forming 71.7%. Compliance is achieved within the stage 1 area and further compliance is expected to be achieved with regard to the whole concept approval. The 109 units receiving 2 hours of solar access form 30.9% of the total 352 x independent living units. Therefore 137 units within the later stages required to receive 2 hours of solar to present a totally compliant design. Noting stage 1 is the southern aspect of the site, improved solar access with later stages is expected progressing north.

All other development standards remain as per clause 50, and have been addressed above.

Chapter 4 Design of residential apartment development of the *SEPP (Housing) 2021* has been completed as the seniors housing is presented in the form of residential apartment development. As detailed within section 2.2 of report, the application was referred to the Design Review Panel for commentary and consideration, of which the appointed panel were granted a satisfactory response. Furthermore clause 148 non-discretionary development standards for residential apartment development have been assessed and the modification and concurrent stage 1 development application DA0365/2024 demonstrate a compliant design with regard to the outlined standards.

Within **Attachment C**, consideration and assessment of schedule 4, schedule 8 and schedule 9 have been measured against the modification application and it is deemed complementary with the parameters included.

Consideration of the Apartment Design Guidelines (ADG) has also been undertaken (see **Attachment D**). It is noted that the modification presents a generally compliant design with regard to the recommended standards. A notable discrepancy identified within the modification application pertains to 2F Building Separation. The modification seeks to increase the approved building separation between the stage 1 buildings from 9m to 12m. However, reduced setbacks between R2 and R4, R3 and R4, and finally, R3 and R1 are identified and are considered to be acceptable given the improvement demonstrated as part of the modification to the building envelopes, and loss of privacy can be mitigated and resolved through suitable design amendments.

Illawarra Regional Environmental Plan No.1 (Deemed SEPP)

Consideration of the *Illawarra Regional Environmental Plan No. 1 (Deemed SEPP)* has been completed within the assessment of the subject modification application. Notably, the plan prescribed the height related to high rise buildings within the municipality. Clause 139(3) noted where proposed buildings exceed 11m in height concurrence from the Director General of the Department of Planning and Infrastructure would be required. However, the original assessment granted approval for the maximum height of the buildings within the concept development to be 20m inclusive of roof plant. Furthermore, the concept development approved the building envelope heights with regard to the storey composition of each building.

The proposed modification remains consistent with the original assessment. The maximum height does not exceed 20m or the corresponding building heights for each building envelope, and the storey composition of each building is appropriate. The modification demonstrates that Building R1 and R3 present four storeys and maximum height of 15m along Wattle Road, which is consistent with the original assessment and approved building envelopes. It is noted the architectural roof form exceeds the maximum height of 15m along Wattle Road, however as detailed above it is considered as a positive design attribute that does not adversely impact the streetscape or overall public domain and does not exceed the overall maximum height of 20m. As such the roof form is considered to be consistent with the concept approval.

Buildings R1 and R2 present two additional storeys internally within the site, which will not be observed from the public domain, as such protecting the appearance of bulk and scale. This is consistent with the original assessment and the mass of the building concentrated internally.

Buildings R2 and R4 are a consistent four-storey arrangement, both internally and to west, along the internal road. The building height of Buildings R2 and R4 remain consistent with the concept approval.

The modifications proposed do not contravene the original assessment in a negative manner and are substantially the same.

Shellharbour Local Environmental Plan 2000

The relevant local environmental plan at the time of the original assessment applying to the site is the *Shellharbour Local Environmental Plan 2000* ('the LEP 2000').

Zoning and Permissibility (Part 3)

The site is located within the 2(e) Mixed Use Residential zone pursuant to Clause 23 of the LEP.

According to the definition with the Standard Instrument – Principal Local Environmental Plan (2006 EPA 155a), the proposal satisfies the definition of 'seniors housing', 'community

facilities' and 'commercial-retail floor area' which are a permissible use with consent in the Land Use Table in Clause 23.

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

- *To allow for mixed use residential neighbourhoods to be developed on 'greenfields' sites providing for a range of household preferences and needs compatible with fully developed residential neighbourhoods.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- the proposal offers both residential accommodation, community' facilities and retail services for future residents and the wider community; and
- the proposed development promotes the establishment of residential neighbourhood and community development.

Note: as detailed above, the modification application is to be assessed under the current gazetted Environmental Planning Instruments as the enforcing guiding instruments. However, consideration of the repealed instruments that were applicable at the time of the original determination have been undertaken as part of this assessment. The SLEP 2000 has since been repealed and the clause 1.8A Saving provision relating to development application, later development application for the staged development in line with the concept approval are not upheld under the SLEP 2000. Therefore, to demonstrate and ensure alignment between the concept and built form development, an assessment under the current Instrument has been completed, see below.

Shellharbour Local Environmental Plan 2013

The current local environmental plan applicable to the site and future associated development applications that are applicable to the site is the Shellharbour Local Environmental Plan 2013 ('the LEP 2013').

Permissibility and Zone Objectives (Part 2)

The site is zoned R3 Medium Density Residential under the provisions Shellharbour LEP 2013.

The modification is not amending the approved land uses, as detailed above. Senior housing and community facilities are permitted with consent within the R3 zone. However, it is noted the following non-ancillary uses are not permitted within consent under the LEP 2013:

- Consulting rooms;
- Therapist and Beauty Treatment Rooms; and
- Café/retail.

The described uses while not permitted within the R3 zone under the LEP 2013, the modification is not amending permissibility's under the historic instrument in which the consent was granted. Therefore, the above detailed uses approved within DA0331/2012 to remain.

The modification remains consistent with the objectives of the R3 Medium Density Residential. The zone objectives include the following (pursuant to the Land Use Table in Part 2):

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

As detailed, the modification does not amend the concept approval in terms of land use and the proposal is considered to be consistent with these zone objectives.

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.

It is important to note that the Concept Approval prevails to the extent of any inconsistencies between the SLEP 2013. Specifically, clause 4.3 and 4.4 of the SLEP 2013 are overridden by the development controls within the Concept Approval. Otherwise, assessment matters for consideration include:

- Clause 5.21 Flood Planning – the proposed modification seeks to increase the finished floor level of R2 and R4 by 720mm to accommodate the PMF + 500mm freeboard. Henceforth the improved design suitably accommodates the flood affection of the site and updated flood modelling.
- Clause 6.2 Earthworks – the proposed modification seeks to reduce the extended of basement excavation by 369m², due to the refined basement design. The split-level basement design remains consistent with the concept approval. Councils Engineers have reviewed the amended bulk earthwork design and denoted a satisfactory civil design.

Uniting Care Aging Precinct Development Strategy (PDS)

The PDS applies to the land and proposed modification application to the concept development. The modification to the concept development is generally consistent with both the development standards specified within the PDS and approved conceptual development.

The proposed refinement to the building envelopes denoted within the modification application, are consistent with the development detail specified within the PDS. The building height, storey, GFA and setbacks are considerable minor and do not contravene the parameters of the PDS.

The compositions and presentation outward to the public domain and adjoining sites is consistent with the outlined building types, offering the presentation of four storey to Wattle Road and along the western boundary, with additional storeys associated to R1 and R3 concentrated internally.

The additional FSR remains consistent with the PDS as section 3.4.1 recommended a FSR for the site of approximately 1.1:1. The concept approval granted consent for cumulative total of 45,800m² which is 1.07:1. The modification seek to increase the GFA within stage 1 by 287m², which is 0.6% of the overall approved GFA and will be absorbed by later stages. Furthermore, the bulk and scale are deemed substantially the same as the original development as the increase within stage 1 is notably minor.

The amendment to the setback, which includes the articulation setbacks, do not demonstrate a non-compliant design. The PDS outlines a setback of 5m along the Wattle Road frontage

and permits articulation elements to intrude into the 5m setback by up to 2m. R1 residential component to the setback 7m at the closest point, with the ground floor POS setback 3.7m and all upper levels 5.8m from the Wattle Road boundary line. Building R3 demonstrates the same setback pattern with the difference being an increased setback of 4.2m for the ground floor POS. The setback of Buildings R1 and R3 along Wattle Road align with the specified within the PDS.

The PDS identifies Buildings R2 and R4 as building type B, and outline a setback 3-5m from the street boundary. The ground floor units are all setback over 5m from the internal access road, and setback 15m from the western boundary.

The realignment of the internal access road 'road no.1' creates a consistent 2.5m setback between the road and western boundary. The road design reduces the number of on-street parking from 20 spaces to 8, however retains pedestrian footpath. Proposed realignment demonstrates a compliant design with regard to section 2.3.2.

Finally, the concept approval approved a reduced number of on-site parking, as such the relocation of 9 parking spaces within stage 1 to be located and available within later stages of the concept development is considered satisfactory as the cumulative total will remain.

(b) 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, that are applicable to the subject site and proposed modification to the approved concept development application.

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

The following Development Control Plan is relevant to this application:

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

The applicable provisions outlined with the DCP 2013 have been noted and the modification to the concept approval demonstrates general alignment. It is noted that a complete assessment of the DCP 2013 provisions to be completed within the concurrent stage 1 development application DA0365/2024, with greater design detail available to inform the assessment. However, the following is noted:

Chapter 3 – Residential Development

The development controls included within Chapter 3 have been noted, however are typically superseded by the *SEPP (Housing) 2021*, the concept approval and/or the PDS. However, the objectives have been considered and present a typically compliant residential flat building.

Chapter 7 - Shellharbour City Centre Commercial Development

The subject site is identified as Precinct M Eastern Residential – Wattle Road, within the Shellharbour City Centre and a Precinct Development Strategy for the site has been adopted and approved by Council on 15 May 2012. The proposed development aligns and complies with the objectives listed within the SDCP 2013 for Precinct M.

Chapter 13 Parking, Traffic and Transport

The proposed parking provides a surplus of parking in reference to the specifications within Table 13.1. Within stage 1, 157 on-site are proposed and 74 are required as per table 13.1 of

the SDCP 2013. As such a reduction in car parking space by 9 to be offset within later stages to form the required total of 456.

Chapter 15 Waste Minimisation and Management

The proposed modification demonstrates amendments to the basements, of which the western basement associated to Buildings R2 and R4 includes a dedicated waste storage and collection point. The waste collection being internal is considered an improvement, however the size and suitability to be considered further within concurrent stage 1 development application DA0365/2024.

Chapter 16 Access for People with a Disability & Chapter 17 CPTED

Further assessment will be undertaken within the concurrent stage 1 development application DA0365/2024.

Chapter 20 Landscaping & Chapter 21 Chapter 21 Perseveration and Removal of Trees of Vegetation

Tree removal and landscape design is to be considered within concurrent stage 1 development application DA0365/2024.

Chapter 23 Cutting, Filling and Retaining Walls

Bulk earthwork to form within the development application scope and the excavation will exceed beyond 1m in depth. Council Engineers have considered the scope of excavation and proposed retaining walls, which present a satisfactory conceptual design. The reduction in excavation associated to development of the basement car parking to services the stage 1 development is an enhancement and overall improvement.

Chapter 24 Floodplain Risk Management

The modifications to the finished floor levels of R2 and R4 seek to raise the levels by 720mm to accommodate the PMF + 500mm freeboard, which is complementary to the land flood affectation and updated flood level. Council Flooding Engineer has considered the amendment and advised the modification is conditionally satisfactory.

Chapter 25 Stormwater Management

Civil Stormwater Drainage Plans have been considered within the scope of the proposed modification application and demonstrate a compliant design with regard to the Australian Standards, and the engineering parameters outlined within the DCP. Conditionally satisfactory conditions to be updated and imposed within the modified notice of determination.

Chapter 29 Social Impact Assessment

Further assessment within concurrent stage 1 development application DA0365/2024.

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):

- ***Shellharbour City Council Local Infrastructure Contributions Plan 2019 (9th Review)***

This Contributions Plan has been considered and as the application for senior housing development has been made by a registered social housing provider as defined within the *SEPP (Housing) 2021* and repealed *SEPP (Housing for Seniors and People with a Disability) 2004*, no section 7.11 Development Contributions are applicable. Under the Ministerial Direction dated 14 September 2007, Council is not permitted to impose a contribution towards

infrastructure under section 7.11 whereby an application for housing is made by a social housing provider. As such no development contributions are applicable.

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

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

(e) 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.

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

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

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

- Context and setting – The proposal is consistent with the context of the site, in that the proposed changes remain consistent with the context and setting of the Shellharbour City Centre and are appropriate. Character and amenity of the locality and streetscape, scale, mass, form, character etc of surrounding development and potential impacts on adjoining properties.
- Access and traffic – The proposed modification retains the proposed site access via two driveway crossovers along Wattle Road. The access and traffic, parking and access demands are considered to be aligned with the concept approval. Notably, the proposed available on-site parking cumulative total remains as per the approved requirements specified within DA0331/2012 and the reduction in parking located within stage 1 to be absorbed by later stages. However, it is acknowledged the parking rate demonstrated within the modification surpasses the numerical parking rate of the Shellharbour DCP 2013, *SEPP (Housing) 2021* and *SEPP (Seniors Living) 2004*, creating a surplus in onsite parking. Furthermore, the site is well connected to the existing public transport networks, and within walking distance, approximately 150m of the Stockland Shopping Centre which boasts a range of daily services and facilities.
- Public Domain – The proposal is considered to improve and elevate the public domain. The site has been vacant and under-utilised since the lodgement of the original development application for the concept approval in 2012. The proposed modification and concurrent development application for stage 1 DA0356/2024 will activate the public domain space and, rather present public domain opportunities that have not been available. The inclusion of pedestrian footpath connectivity along the Wattle Road interface and through the site will promote connectivity and activation of the space, enhancing the existing context.
- Utilities – The proposal has all utilities available within the site. The proposed modifications are not expected to intensify the overall conceptual development scope as the modification

application seeks to redistribute the facilities and amenities evenly throughout the site, specifically with regard to stage 1. The services for the additional 11 independent units included within the stage 1 area are expected to receive all necessary and critical utilities.

- Heritage – The site does not contain any heritage items.
- Land resources – There are no adverse impacts anticipated upon land resources, such as water catchment, or nearby mining or agricultural industry.
- Water/air/soils impacts – No adverse water, soil or air impacts are anticipated as part of the proposed modification. A geotechnical investigation was included within the assessment of the original development application and the site has since remained vacant and relatively undisturbed, and the proposed modifications do not trigger any additional contamination concerns.
- Flora and fauna impacts – The proposed modification application does not include tree or vegetation removal as such does not offer impacts to the native species, threatened or otherwise, furthermore the biodiversity value in of the site or area. However, trees are located across the site and a comprehensive analysis of proposed tree removal works will form part of the concurrent Stage 1 development application.
- Natural environment – A notable feature of the site is the natural topography, due to the significant fall from east to west by 12m and a further cross slope occurring from south to north by approximately 7m. The proposed modification seeks to reduce the extend of earthworks through the reconfiguration of the basements associated to the stage 1 buildings. Additionally, the proposed modification seeks to protect the originally approved building profile and responds to the topography.
- Noise and vibration – Construction and operational impacts are suitably mitigated through the imposition of relevant conditions of consent. Noting the proposed modification application pertains to the concept approval, within the later development applications for the built form such conditions to be included to protect the acoustic amenity.
- Natural hazards – The site is flood affected and the proposed modification seeks to amend the floor levels of the stage 1 buildings (R1, R2, R3 and R4) to response to the updated flooding information and levels applicable to the site. Council Flooding Engineer has considered the proposed modification and deemed the increase in levels a suitable and satisfactory outcome, addressing the flood affectation.
- Safety, security and crime prevention – Noting the proposed modification pertains to the concept approval, the proposed modifications do not present adverse impact to the overall CPTED nature of the site. Greater analysis to be completed within the concurrent development application for stage 1.
- Social impact – The concept approval provides greater diversity and offering of seniors living for the Shellharbour community. The proposed modification is driven by market demands and demographic trends, to offer a specialised seniors housing development that is well connected to existing infrastructure and services.
- Economic impact – The proposal is expected to positively contribute to the economy through the generation of employment associated to both the construction of the senior's living development and in an ongoing capacity. Furthermore, the future

residents will add to the economic growth being well connected to the Shellharbour City Centre, the economic hub.

- Site design and internal design – the proposed modification demonstrates a complementary arrangement that is responsive of the site characteristics. The slope has been considered through the concentration of additional storey oriented to the centre of the site. The future landscape space introduces important greening and separation between the buildings and public domain. The redefined internal road alignment created an improved arrangement through a consistent street pattern. The overall site design is considered to be improved and enhanced as a result of the modifications.
- Construction – The relevant conditions to be imposed within the concurrent stage 1 development application, and all later development applications for further stages of the development. The proposed modification does not grant approval for construction.
- Cumulative impacts – The modification is not anticipated to result in any adverse cumulative impacts. The development is consistent with the concept approval and proposes amendments in which improve the design and overall amenity to the seniors housing development. Furthermore, the modification application remains consistent with applicable planning controls.

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

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

The proposed development is considered suitable for the site, and presents a proposal that fits within the immediate locality and wider context. The site is currently vacant and considered to be under-utilised, as such the proposed development activates the site and broader Shellharbour City Centre locale. The site is identified as Precinct M within the Shellharbour DCP 2013, which serves as the eastern edge of the Shellharbour City Centre and the offering of seniors living in the form of a residential flat building acts as a natural transitional marker between the higher density housing typology and town centre, and established low density residential. The proposal is well connected to the existing public transport networks and infrastructure, parking, open space and community facilities and services. Similarly, the site to offer a range of public services that will be accessed by future residents and the wider Shellharbour community.

The sites natural topography is a notable feature; however, the development is complimentary to the land pattern and the built form corresponds to the fall, implementing a stepped design. Additionally, the site is flood affected, which the modification application seeks to amend the finished floor levels and adequately address the natural hazard. Henceforth, the site attributes are generally conducive to the development and have been adequately addressed to present a measured development in which generates a cohesive development for the site, immediate and wider context. There are no adjoining uses that are considered inconsistent with the proposal, rather, the proposed development complements the city centre context.

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

No submissions have been received for the proposed modification application.

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

The proposed development is considered to be in the public interest and this is denoted through the assessment consideration of the proposed development. The proposed modification seeks to implement a range of changes to the originally approved concept approval and development scope. The proposed modification seeks to align the development with the evolved planning provisions and controls, demonstrating an updated design in which improves compliance with the Apartment Design Guidelines. As such, the proposed modification improves the compliance with the applicable planning controls.

Furthermore, the proposed modification remains consistent with the Uniting Care Precinct Development Strategy (PDS) approved 15 May 2012 and aligns with the Shellharbour Development Control Plan 2013, Chapter 7 as the site is identified as Precinct M Eastern Residential – Wattle Road with the Shellharbour City Centre Master Plan. The modification application retains the approved use of the site for independent living units as seniors housing and ancillary non-residential uses. The site is well located within the Shellharbour City Centre, being within close proximity to the Stockland Shopping Centre, TAFE campus, Shellharbour Hospital, Shellharbour City Council Civic Centre and Public Transportation.

The site is current vacant and the proposed development enlivens and activates Precinct M, adding in a positive manner to the economic and social benefits to the region and offering greater housing availability and diversity dedicated to seniors living, supported by ancillary uses which are available and accessible to the larger community. Similarly, the health and safety of the public and wider Shellharbour community is expected to be impacted in a positive manner as the development will add to the amenity, delivering a development that promotes a walkable and healthy site within the Shellharbour City Centre Master Plan.

3.3 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 6** below.

Table 6: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by the owner of the land to which it relates.	Yes
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.	Yes
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Yes

Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Yes
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Yes
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Yes
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 amendments to the conceptual development, modifications to the approved building envelope including building height, setbacks and building separation, redistribution of communal space, independent living units and parking spaces within stage 1, realignment of the road and basement access and design. The proposal is not to correct a minor error, misdescription or miscalculation.	Yes
Description of the expected impacts of the modification (CI 100(1)(f))	<p>The proposed modification is unlikely to result in significant impacts. While the modification proposed changes to the conceptual design, including setbacks and building heights, the modifications are generally consistent and comply with the approved development parameters of the concept approval. Furthermore, the cumulative total of units, parking spaces, GFA and communal space remain as per the concept approval and seek approval for the redistribution of such throughout the Stage 1 area, the later stages absorbing and responding to the proposed modifications.</p> <p>Refer to 'key issues' section within this report for commentary against consistency with the concept approval, and other assessment matters.</p>	Yes
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.	Yes
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	The proposed development was not accompanied by a Biodiversity Development Assessment Report.	N/A
Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Yes

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.	Yes
BASIX Certificate (CI 100(3))	The proposed modification does not involve BASIX development being a modification to a concept approval.	N/A
Penrith Lakes Development Corporation (CI 101)	The proposed modification does not involve Penrith Lakes Development Corporation.	N/A
Qualified designer statement for residential apartment development (CI 102)	The proposed modification does involve 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 involve mining and petroleum development consents.	N/A
Notification and exhibition requirements (CII 105-112)	Refer to Section 4.3 of this report. Requirements undertaken in accordance with the Shellharbour CPP.	Yes
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.	Yes

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The modification application was referred to various 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 7**.

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

Table 7: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act) – Not Applicable			
Referral/Consultation Agencies			
Transport for NSW	S2.122 of the SEPP (Transport and Infrastructure) 2021 in that the development is considered to be traffic generating development	No objection as the proposal does not result in any changes to traffic generation.	Yes
Integrated Development (s4.46 of the EP&A Act) – Not Applicable			

4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **Table 8**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 8: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	<p>Council's Engineering Officer reviewed the submitted civil earthwork plans, stormwater detail design and proposed modification plans and identified a range of inconsistencies and matters to be addressed.</p> <p>The proposed changes to the conceptual plans were deemed relatively minor, however the access design and earthworks required further assessment and clarification, to ensure the proposed modifications do not erode beneficial features of the original design, and safeguard the later stages of the concept development noting the subject modification pertain to the stage 1 portion of the site/concept development.</p> <p>Amended Civil Earthwork, Stormwater Drainage and Traffic Statement were submitted to resolved the identified discrepancies and a conditionally satisfactory response determined.</p> <p>Outcome: Satisfactory subject to standard conditions being imposed on any consent granted (refer to Attachment A).</p>	Yes
Traffic	Council's Traffic Engineering Officer reviewed the proposal and noted the need for improved footpath and pedestrian connectivity along Wattle Road and Benson Avenue. Footpath improvements were identified within the Shellharbour Active Transport Strategy adopted by Council in 2024 and such a development of the scale and nature would further demonstrate the need for the infrastructure. Conditions to be included within the consent of concurrent stage 1 development application to promote and facilitate the footpath connectivity.	Yes
Business and Investment	No objections or additional conditions recommended.	Yes
Community Life	No objections or additional conditions recommended.	Yes
Contributions	No development contributions to be levied for a registered social housing provider, in accordance with the provisions under the SEPP (Housing) 2021 and SEPP (Seniors Living) 2004.	Yes
Environment	No objections or additional conditions recommended.	Yes

Flooding	No objections. Updated conditions recommended in relation to the amendments to the proposed finished floor levels and access road through Stage 1 to demonstrate compliance with levels above the PMF plus 500mm freeboard.	Yes
Waste	No objections or additional conditions recommended.	Yes

4.3 Notification and Community Consultation

The modification application was notified in accordance with the Shellharbour Council's Community Participation Plan from 13 February 2025 to 12 March 2025. The notification included the following:

- Notification letters sent to adjoining and adjacent properties (a rough estimate of the number of letters sent);
- Notification on the Council's website;
- Signs placed on site.

The Council received a total of zero unique submissions.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

- *Building Separation* – The proposed modification to the building envelopes associated with the stage 1 buildings (R1, R2, R3 and R4) demonstrates an increase in the separation between the buildings. The building separation proposed to be increased from 9m to 12m to comply with 2F of the ADG. However, it is identified reduced setbacks of varied distances between R1 and R3, R1 and R2, R2 and R3 and R4 are noted. The setback arrangement between the stage 1 buildings demonstrates further various in separation at different levels. As recommended within section 2F of the ADG the distance between habitable rooms and balconies to be 12m. The separation arrangement demonstrates varied reductions, however all being greater than 9m. As such, the proposed modification remains to be considered an improve separation design, noting the distance presented between the buildings as per the approved concept design complied with SEPP Policy No. 65 – Design Quality of Residential Flat Development as per the relevant provisions at the time of assessment and the increase from 9m demonstrates an updated pattern that is responsive to the updated guiding documentation.
- *Engineering Matters* – Councils Engineers sought additional information in relation to the earthworks, retaining wall design and access considerations. Council Engineers sought clarification to the overall conceptual design to safeguard the suitability of the associated engineering matters throughout the progression of the development in an ongoing capacity to completion.
- *Numerical Compliance* – The proposed modification seeks consent to redistribute the independent living units (ILU), car parking spaces and gross floor area (GFA) within stage 1 area noting the numerical compliance is to be preserved to continue to demonstrate compliance as per the approved concept development. The proposed changes are considered to numerically minors, henceforth do not present an arrangement whereby

later stages could not functionally or practically absorb or offset the proposed amendments demonstrated within the stage 1 area. The proposed modification numerical changes are noted;

- 152 x ILU are proposed within the stage 1 area of the site whereby the concept approval granted consent for 141 x ILU between the stage 1 buildings. The increase of 11 x ILU forms 3.1% of the total 352 ILU that were approved under the concept development application. Henceforth a remaining 200 x ILU are to be dispersed within the remaining six (6) residential flat buildings that were approved. The division of the remaining 200 x ILU can be evenly distributed throughout R5, R6, R7, R8, R9 and R10, approximately 33.33 ILU within each building. Furthermore, noting the economic and social drivers in which have influenced the subject modification application to provide a greater diversification of unit mix, it is anticipated the later stages can suitably absorb the reduced amount
- The GFA within stage 1 demonstrates an increased GFA by 287m², which is 0.6% of the total permitted 45,800m². The increase in GFA is complementary to the increased ILU, as the reduce number of units within later stages suggest a reduced GFA. Henceforth, a reduction in units and GFA within later stages is expected to practically achieved and demonstrated. The increased 0.6% is notably minor and is anticipated to be accommodated within later stage.
- Similarly, the reduction in car parking space by 9 within the stage 1 area forms 1.97% of the total required on-site parking. The concept approval notes 456 on-site car parking is required, and the remaining 299 spaces are expected to be evenly dispersed across the later stages. Noting all remaining 7 buildings, including the dedicated place of worship demonstrate sufficient parking facilities, and through on-street parking along Road no.1 and the increase in 9 space is expected to be evenly disrupted throughout the site.

As highlighted the proposed changes and redistribution of ILU, parking and GFA are considerably minor in numerical value, henceforth do not demonstrate that later stages could not unreasonably accommodate the amendments. The amendments to later stages as a result of the amendments are not expected to be problematic and full compliance suitably achieved. To support the amendments and ensure compliance with the cumulative total of ILU, car parking spaces and GFA specified within the concept approval notice of determination is retained, conditions to be updated to reflect the redistribution Condition no.1 Concept Approval to reference changes within stage 1 to be absorbed and or offset within later stages to ensure compliance is achieved within an ongoing capacity.

6. CONCLUSION

This modification application has been considered in accordance with the requirements of the *EP&A Act 1979* and the *2021 EP&A Regulation* as outlined in this report. Following a thorough assessment of the relevant planning controls and 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 and or deemed satisfactorily through the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

It is recommended:

- that the Modification Application DAM0146/2024 for the modification to 7.2012.331.1 – (Senior Living Development (Staged Concept Approval)) – Modification to include minor changes to the approved building envelopes including increased building separation, a minor increase in independent living units for stage 1, increase in height, rationalisation of basement, parking and access arrangement and improved internal amenity at 171 Wattle Road, Shellharbour City Centre 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: State Environment Planning Policy (Housing for Seniors and People with a Disability) 2004
- Attachment C: State Environmental Planning Policy (Housing) 2021
- Attachment D: Apartment Design Guide Compliance Table
- Attachment E: Modification Plans
- Attachment F: DA0331/2012 Concept Approval Notice of Determination
- Attachment G: DA0331/2012 Assessment Report
- Attachment H: DA0331/2012 Approved Suite of Plans
- Attachment I: Civil Engineering Stormwater Drainage Plans
- Attachment J: Civil Bulk Earthworks Plans
- Attachment K: Traffic Statement