



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

SYDNEY WESTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSWC-376 DA-1183/2016/C
PROPOSAL	<p>Modification to Development Consent DA-1183/2016 under Section 4.55 (2) of the Environmental Planning and Assessment Act 1979, for:</p> <ul style="list-style-type: none"> - The consolidation of the reception and administration facilities approved across B1 and the ground floor of B10 to be provided within an expanded B1 footprint; - Addition of a multipurpose function room generally in the location of the approved Building B7; - Addition of a 'shop' building generally in the location of the approved building B11; - Removal of the basement car park and provision of a subsurface storage and services area; - Co-location of rooms (and overall reduction from 155 to 140) which would have otherwise been provided as part of Buildings B7/B8, B10 and B11 into a combined three storey building consisting of two wings, generally located within the footprint of Building B10 (referred to as B10A and B10B); and - Provision of 42 at grade car parking spaces accessed off Thomas and Katie Walsh Avenues (the quantum of parking is two less spaces than originally approved). <p>The proposal is identified as Integrated Development under Section 100B of the Rural Fires Act 1997.</p>
ADDRESS	Lot 152 in DP 717956 68-82 STEWART AVENUE, HAMMONDVILLE NSW 2170
APPLICANT	Hammondcare
OWNER	Hammondcare
MOD LODGEMENT DATE	1 November 2023
ORIGINAL DA DETERMINATION DATE	19 September 2017
APPLICATION TYPE	Modification Application under Section 4.55(2)

REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : General development over \$30 million
CIV	\$61,847,305
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP/s4.15(1)(a) matters	<ul style="list-style-type: none"> ▪ Existing Uses provisions pursuant to Division 4.11 of Part 4 of the Environmental Planning and Assessment Act 1979 ▪ Existing Uses provisions pursuant to Part 7 of the Environmental Planning and Assessment Regulation 2021 ▪ State Environmental Planning Policy (Resilience and Hazards) 2021 ▪ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ▪ State Environmental Planning Policy (Housing) 2021 ▪ Liverpool Local Environmental Plan 2008 ▪ Liverpool Development Control Plan 2008 <ul style="list-style-type: none"> ○ Part 1 General Controls for All Development
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	Nil
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ol style="list-style-type: none"> 1. Architecture Plans 2. Landscape Plans 3. Design verification statements 4. Statement of Environmental Effects 5. Design Excellence Panel Minutes 6. Land Contamination Reports 7. Plan of management 8. Acoustic Report 9. Stormwater Drainage Report 10. Civil Engineering Plans 11. QS report 12. Bushfire Report 13. Heritage Impact Statement 14. Accessibility report 15. Traffic Report 16. Geotechnical Report 17. Flood Risk impact and/or management plan
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval, subject to conditions of consent
DRAFT CONDITIONS TO APPLICANT	N/A

SCHEDULED MEETING DATE	12 August 2024
PLAN VERSION	As per submission
PREPARED BY	Jason Marshall
DATE OF REPORT	5 1 July 2024

1 EXECUTIVE SUMMARY

1.1. Reasons for the report

The Sydney Western City Planning Panel (SWCPP) is the determining authority as the development has a Capital Investment Value over \$30 million, pursuant to Clause 2 of Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021. This is a modification subject to 4.55(2) to an application approved by the Sydney South West Planning Panel.

1.2. The proposal

Council has received an application to modify consent DA-1183/2016, which approved:

“Aged care facility including partial demolition of bond house and demolition of other aged care buildings on the site, site works including excavation and tree removal, staged construction of ten buildings providing 155 beds and communal facilities, at grade and basement car parking and site landscaping and infrastructure upgrades. The application is made in accordance with Section 108 of the Environmental Planning & Assessment Act 1979 for existing use rights. The proposal is identified as Integrated Development under Section 100B of the Rural Fires Act 1997 requiring approval from the NSW Rural Fire Service. Liverpool City Council is the consent authority and the Sydney South West Planning Panel has the function of determining the application.”

The proposed modification principally includes:

- The consolidation of the reception and administration facilities approved across B1 and the ground floor of B10 to be provided within an expanded B1 footprint;
- Addition of a multipurpose function room generally in the location of the approved Building B7;
- Addition of a ‘shop’ building generally in the location of the approved building B11;
- Removal of the basement car park and provision of a subsurface storage and services area;
- Co-location of rooms (and overall reduction from 155 to 140) which would have otherwise been provided as part of Buildings B7/B8, B10 and B11 into a combined three storey building consisting of two wings, generally located within the footprint of Building B10 (referred to as B10A and B10B); and

- Provision of 42 at grade car parking spaces accessed off Thomas and Katie Walsh Avenues (the quantum of parking is two less spaces than originally approved).

The proposal is identified as Integrated Development under Section 100B of the Rural Fires Act 1997.

1.3. The site

The site is identified as Lot 152 in DP 717956 and is described as 68-82 Stewart Avenue, Hammondville. It has primary street frontages of 370m to Judd Avenue and 350m to Stewart Avenue.

The site is irregular in shape with a total area of 92,787.6m². It currently accommodates the Hammond Care Residential Aged Care Services, which includes independent living units, home care services, and a residential care facility.

1.4. The issues/ modifications

The key issues associated with the proposal relate to the following:

The SWCPP briefing on 29 January 2024 raised concerns regarding whether the proposal is substantially the same as the one approved. Council submits that the proposal meets the 'substantially the same' test as the quantitative and qualitative differences as well as the changes to the critical elements are so minor that, on balance, the modified proposal is substantially the same.

The modified proposal increases the building height a further 200mm, relying on existing use rights. Council is supportive given the modified design has demonstrated consistency with the LEC's planning principles for the assessment of existing use rights.

The application is recommended for approval, subject to the conditions of consent as modified and added.

1.5. Exhibition of the proposal

The modification proposal was notified in accordance with the Liverpool Community Engagement Strategy 2022 between 7 November 2023 and 22 November 2023. No Submissions were received.

1.6. Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 1979 (EP&A). Based on the assessment of the application, it is recommended the application be approved subject to modified and additional conditions of consent.

2 THE SITE AND LOCALITY

2.1. The Site

The greater site is identified as Lot 152 in DP 717956 and is described as 68-82 Stewart Avenue, Hammondville. It has primary street frontages of 370m to Judd Avenue and 350m to Stewart Avenue. An aerial photograph of the subject site is provided below.

The site is irregular in shape with a total area of 92,787.6m². It currently accommodates the Hammond Care Residential Aged Care Services, which includes independent living units, home care services and a residential aged care facility. The complex includes buildings of various architectural designs dating from the early 1950's. These buildings which line a number of cul-de-sac avenues are arranged in a roughly circular site and form the Hammondville Homes for Senior Citizens. The site also includes areas of undeveloped land within the eastern portion of the site.

The site gently slopes from north-west to south-east, with a high point near the corner of Judd Avenue and Southwood Avenue at 14.20 AHD, to a low point in the south-east corner around the detention basin at 4.01 AHD.

The development site fronts internal roads Southwood Avenue to the north, Katie Walsh Avenue to the east, Thomas Avenue to the south, and public road Judd Avenue to the west. The complex continues on the west side of Judd Avenue on a separate parcel of land but is not the subject of this application.

The proposed development is in the centre of the complex and is part way through a staged knockdown rebuild.



Figure 1: Aerial - completed stages 1 & 2 in blue, area for proposed amendment in red (Source: Applicant)

2.2. Site Constraints

<p>Are there any constraints or affectation on the site:</p> <ul style="list-style-type: none"> - Bushfire - Flooding - Heritage Items - Aboriginal heritage - Environmentally Significant Land - Threatened Species/ Flora/ Habitat/ Critical Communities - Acid Sulphate Soils - Aircraft Noise - Flight Paths - Railway Noise - Road Noise/ Classified Road - Significant Vegetation - Contamination - Salinity 	<ul style="list-style-type: none"> - The east of the lot is partly located within a Bushfire Buffer zone and vegetation Category 1. - More than half the lot is identified as flood affected. - The eastern edge of the lot contains environmentally significant land. - The site contains category 4 & 5 Acid Sulfate Soils. - The complex is listed as an item of local heritage significance in Schedule 5 of the Liverpool LEP 2008 known as Hammondville Home for Senior Citizens Item No.29. The site is listed for its social and cultural heritage significance and contributions to the community and not for its built form or design/architectural expression. - The site adjoins a major gas pipeline runs along Stewart Ave. - The site is within the Bankstown Airport Obstacle Limitation Contours (51-70AHD). - Very Low – Moderate Salinity Potential.
<p>Are there any restrictions on title?</p> <p>Attach 88B instrument to the report</p>	<p>The site is affected by Integral Energy Easement.</p>

2.3. The Locality

The greater site is located within the suburb of Hammondville. This residential area is predominantly characterised by low-density detached housing with sporadic infill developments consisting of semi-detached dwellings and multi-dwelling housing developments.

The suburb of Hammondville is bound by Canterbury-Bankstown Council to the east, the suburbs of Holsworthy to the south, Wattle Grove to the west, and Moorebank to the north. Immediately adjoining the subject site to the east is a golf course and public reserves located along the west bank of the Georges River. The immediately adjoining suburban area is to the north, south, and west. The M5 Motorway is to the north, whilst Heathcote Road to the west of the site, and the Georges River tributary is to the east of the site.



Figure 2: Locality (Source: Nearmaps)

3 THE PROPOSAL AND BACKGROUND

3.1. Site History

Approval History	
DA 10/63 D592 Approved: 17 September 1953	Erection of a nursing home
CCC 4113 Approved: 17 September 1953	Erection of a nursing home
CCC 7713 Approved: 7 December 1954	Erection on the land of a building containing 3 single person dwellings for old age pensioners
CCC 9723 Approved: 22 March 1956	The extension of the existing nursing home
CCC 13271 Approved: 8 May 1959	Erection of a new wing to the Matron Shaw Nursing Home
600/61 Approved: 30 November 1961	Erection of additions to nursing home
258/63 Approved: 27 August 1963	Additions to existing nursing home
1463/70 Approved: 14 December 1970	Erection of a nursing home for the aged
450/74 Approved: 25 July 1974	Alterations and additions to internal walls for office within existing Judd Home
862/80 Approved: 22 August 1980	Erection of addition to existing bathroom area of nursing home
166/81 Approved: 23 March 1981	Extension to nursing home
7/93 Approved: 23 April 1993	Erection of 40 bed residential dementia care hostel

282/97 Approved: 25 November 1996	Demolition of 6 buildings and erection of aged care residences and administration cottage
229/2006 Approved: 3 March 2006	84 bed residential aged care facility
623/2007 Approved: 6 February 2007	Minor addition to Bond Building
DA-1183/2016 Approved: 14 September 2017	Aged care facility including partial demolition of bond house and demolition of other aged care buildings on the site, site works including excavation and tree removal, staged construction of ten buildings providing 155 beds and communal facilities, at grade and basement car parking and site landscaping and infrastructure upgrades.
DA-1183/2016/A Approved: 04 June 2018	Modification application lodged pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979. The modification application seeks to modify Development Consent No. DA-1183/2016 which granted approval for the redevelopment of an existing aged care facility and associated works.
DA-260/2018 Approved: 8 August 2018	Construction of new internal walls within the roof space of the Pines and Meadow facilities to provide self-closing doors.
DA-1183/2016/B Approved: 25/07/2018	MODIFICATION- correct reference to architect at Condition 1 (a). The consent should reference 'Integrated Design Group' rather than "Archi-Build International"

3.2. Application Background

Amendment History	
DA-1183/2016 Lodged: 9 December 2016 Approved: 14 September 2017	Aged care facility including partial demolition of bond house and demolition of other aged care buildings on the site, site works including excavation and tree removal, staged construction of ten buildings providing 155 beds and communal facilities, at grade and basement car parking and site landscaping and infrastructure upgrades.
DA-1183/2016/A Lodged: 23 March 2018 Approved: 04 June 2018	Modification application lodged pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979. The modification application seeks to modify Development Consent No. DA-1183/2016 which granted approval for the redevelopment of an existing aged care facility and associated works
DA-1183/2016/B Lodged: 4 July 2018 Approved: 25 July 2018	MODIFICATION- correct reference to architect at Condition 1 (a). The consent should reference 'Integrated Design Group' rather than "Archi-Build International"
DA-1183/2016/C Lodged: 1 November 2023 Subject Application	4.55(2) modification to buildings and associated open space in Stages 3 and 4 of the approved development.

Subject Application History

1 November 2023	Application lodged.
29 January 2024	SWCPP Preliminary Briefing.
8 February 2024	Design Excellence Panel meeting.
11 March 2024	Design Excellence Panel meeting minutes received
22 March 2024	14 Day RFI issued for: <ul style="list-style-type: none"> - Survey plan - Fully full set of plans on separate pages with required details - QS report - To address amenity issues and the ADG - To address DEP Minutes - NSW RFS comments - A Remediation Action Plan (RAP) - Waste Management Details
26 March 2024	RFI extension authorised via email for the RAP to be delivered in May.
10 April 2024	Amended Plans, SoEE, and Plan of Management submitted by applicant.
19 April 2024	Amended bushfire report submitted by applicant.
14 May 2024	General Terms of Approval re-issued by NSW RFS.
15 May 2024	RAP and amended plans submitted by applicant.
23 May 2024	7 Day RFI Issued for: <ul style="list-style-type: none"> - Urban Design requirements - Addressing updated Housing SEPP - Addressing ADG - Operational details for buildings 1, 7/8, & 11 uses
30 May 2024	Applicant provides updated SoEE and Design verification statement addressing points in RFI.
4 June 2024	Applicant is advised that cap & containment strategy in RAP will not be supported without a Site Audit Statement, Site Audit Report, and a Long-Term Environmental Management Plan. Rather than withdraw and reapply in a few months with the reports, applicant agreed in principle to amend the RAP to remove cap & containment strategy.
5 June 2024	At catch up meeting, SWCPP agrees to move the determination meeting to 12 August. 14 Day RFI issued for Environmental Health requirements including: <ul style="list-style-type: none"> - RAP amendment - Missing PSI and EIS reports - Shop details to meet Australian Standards - Skin penetration information for hairdresser - Public Health Regulation 2022 systems details
19 June 2024	Applicant provides RFI response, which is referred to Council's Environmental Health Officer for consideration.
5 July 2024	<ul style="list-style-type: none"> - Council's Environmental Health Officer notes that the PSI and EIS are still outstanding - Applicant provides the Missing PSI and EIS reports

4 THE PROPOSAL

The subject modification application lodged pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 seeks to modify Development Consent DA-1183/2016 which granted approval for the redevelopment of an existing aged care facility and associated works. The proposed modification principally includes:

- The consolidation of the reception and administration facilities approved across B1 and the ground floor of B10 to be provided within an expanded B1 footprint.
- Addition of a multipurpose function room generally in the location of the approved Building B7.
- Addition of a 'shop' building generally in the location of the approved building B11.
- Removal of the basement car park and provision of a subsurface storage and services area.
- Co-location of rooms (and overall reduction from 155 to 140) which would have otherwise been provided as part of Buildings B7/B8, B10 and B11 into a combined three storey building consisting of two wings, generally located within the footprint of Building B10 (referred to as B10A and B10B).
- Provision of 42 at grade car parking spaces accessed off Thomas and Katie Walsh Avenues (the quantum of parking is two less spaces than originally approved).

Staging

Stage 1 – the construction of the new at-grade 90 space car park in the southeast corner of the site.

Stage 2 – the demolition of the northern portion of the existing buildings on site and the construction of buildings B2, B3, B4, B5, and B6 (50 beds).

Stages 1 & 2 are completed as approved in DA-1183/2016/A.

The approved Stage 3 works included the demolition of the southern portion of the existing buildings and construction of building B10.

The proposed modification demolishes a larger portion of the southern existing buildings and the construction of buildings B10A & B10B.

The approved Stage 4 works included the demolition of the central portion of the existing buildings and construction of buildings B7, B8, and B11 and the refurbishment and extension of building B1. This stage also includes 6 at-grade car spaces fronting Thomas Avenue.

The proposed modification demolishes a smaller portion of the remaining central buildings and the construction of buildings B11, B7/8, and B11 and the refurbishment and extension of building B1. This stage also includes 6 at-grade car spaces relocated from Thomas Avenue to Katie Walsh Avenue.

The change in general building arrangement across the site is shown in Figures 3-6 below:



Figure 3: Approved Staging/Demolition Plan approved for DA-1183/2016/A

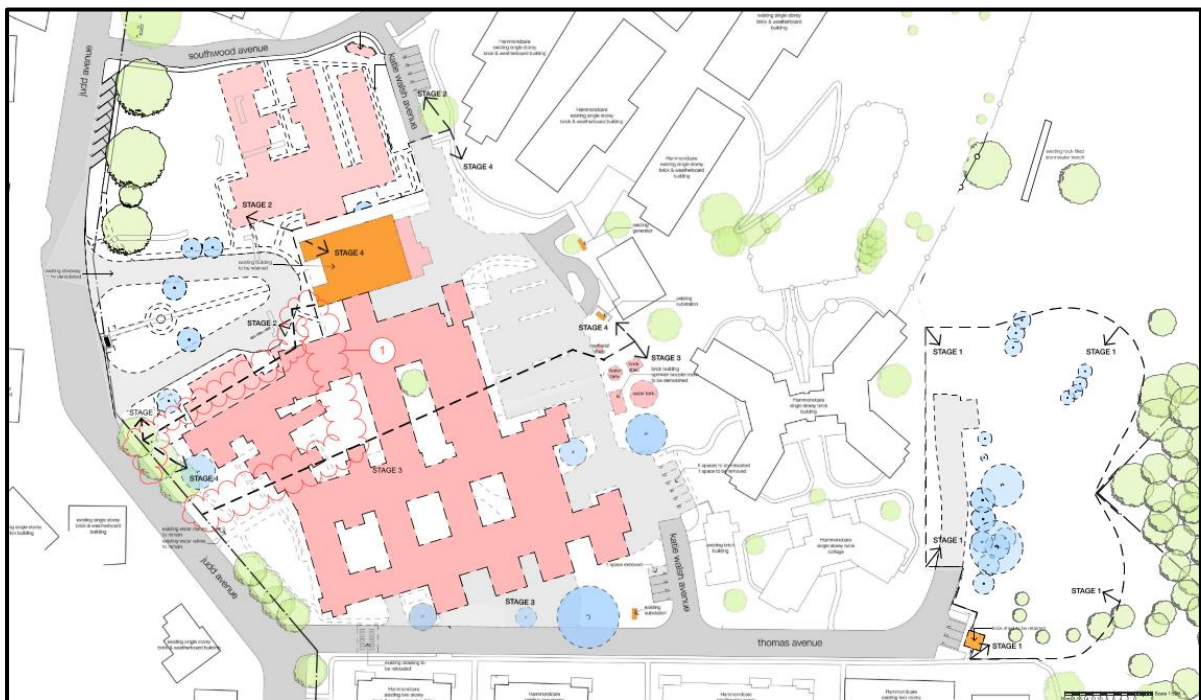


Figure 4: Proposed Staging/Demolition Plan for Subject Modification C



Figure 5: Approved Site Plan (DA-1183/2016/A)



Figure 6: Proposed Site Plan for Subject Modification C

Building B1 (Bond House)

Building B1 on the eastern side of the site is approved to be refurbished and expanded as a central community facility hub for the residents of the surrounding cottages, including a chapel, breakout, and seating area, hairdresser, multi-function room, lounge, cinema, library, administration area, and open plan office spaces.

The proposed modification:

- Reorients the waste storage and loading areas to address the relocated dock from Thomas Avenue to Katie Walsh Avenue.
- Amends the extension to the south east to provide an improved reception area and presentation to Katie Walsh Avenue and refurbished kitchen and resident lounge, lounge space, and outdoor seating area.
- Expands first-floor office area and adds 2 lifts.
- Adds a basement connection for servicing. The basement connects through an underground corridor to building B10A/B (see figures 22 & 23 below).

Changes proposed for building B1 are shown in figures 7 – 13 below:



Figure 7: Approved B1 Ground Floor Plan for DA-1183/2016

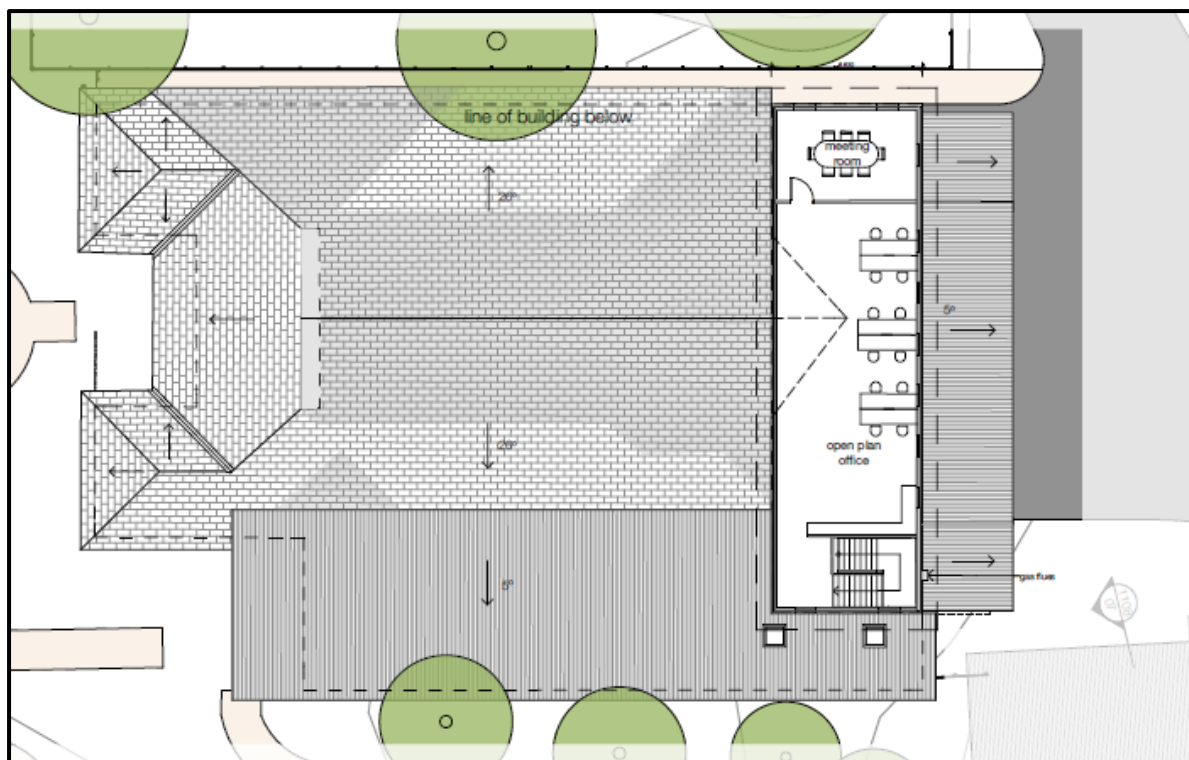


Figure 8: Approved B1 First Floor Plan for DA-1183/2016

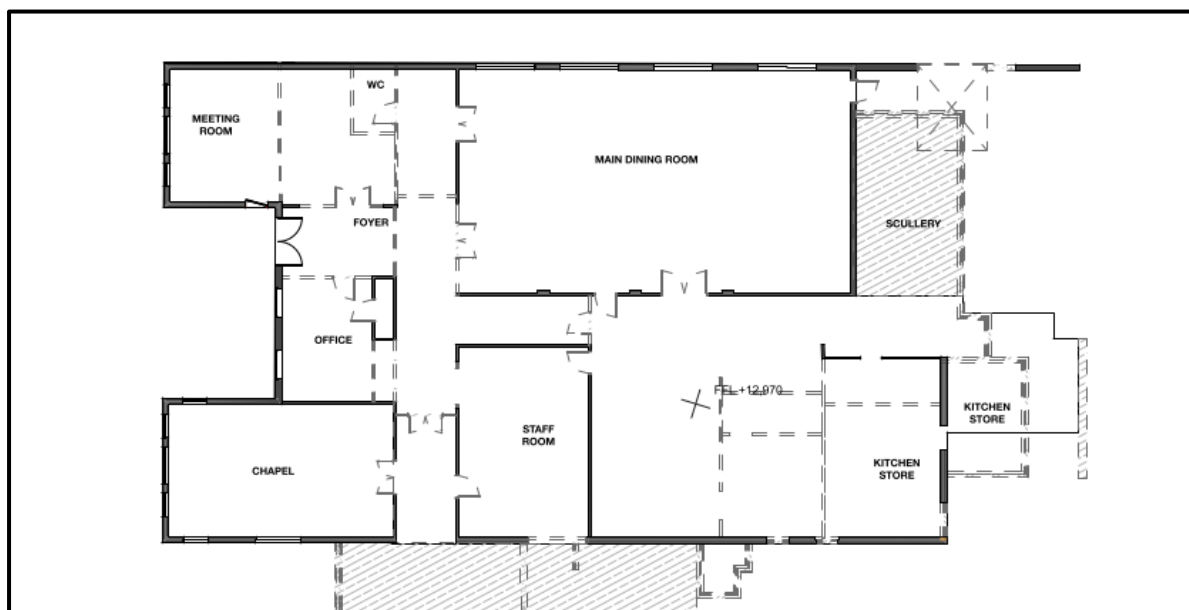


Figure 9: Proposed B1 Demolition Plan for Subject Modification C

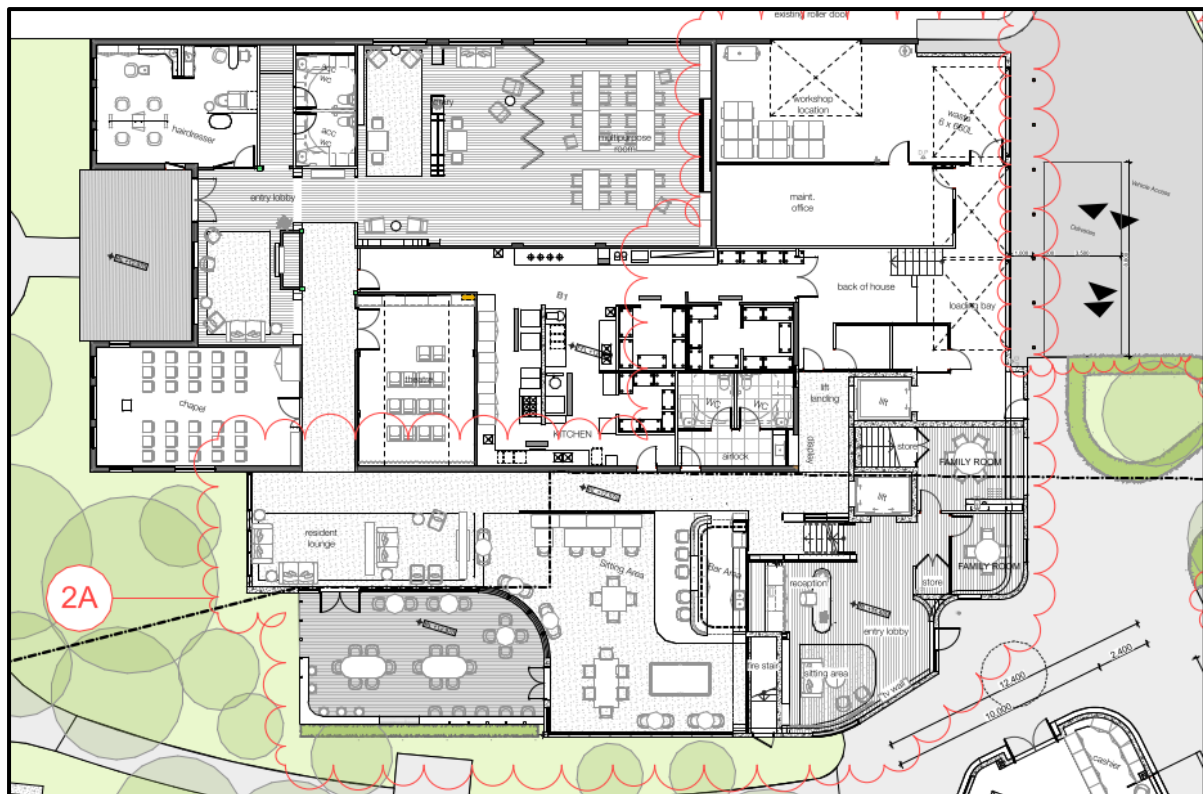


Figure 10: Proposed B1 Ground Floor Plan for Modification C

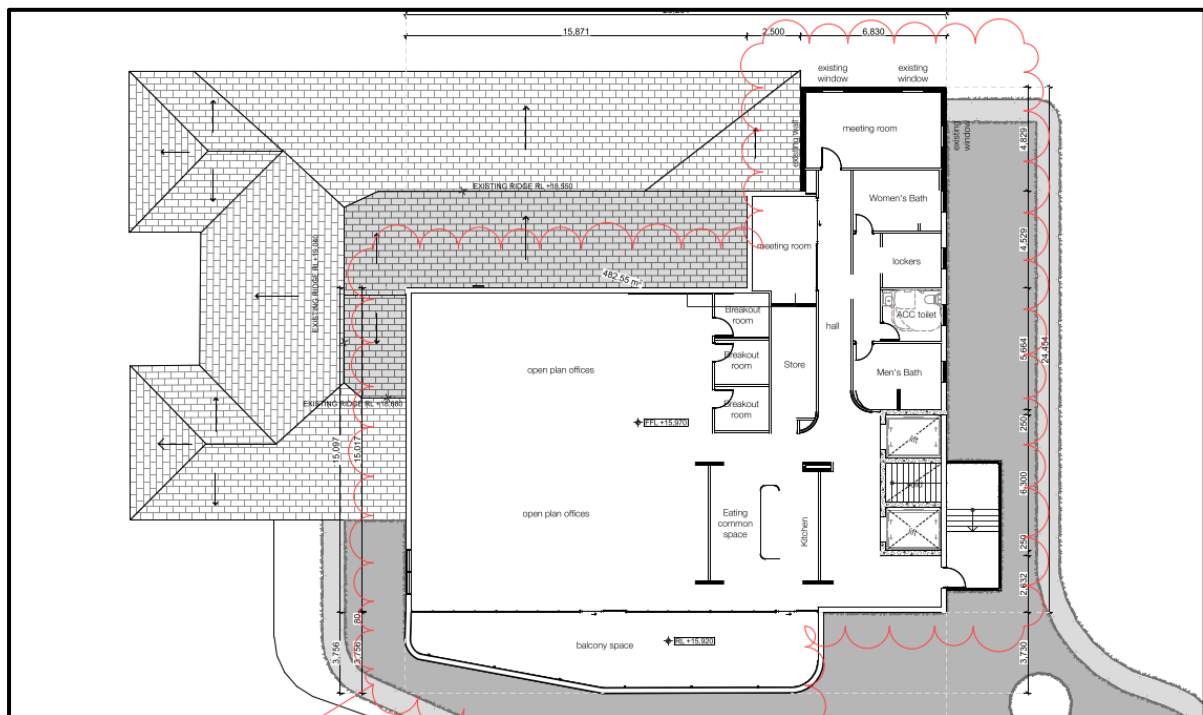


Figure 11: Proposed B1 First Floor Plan for Modification C

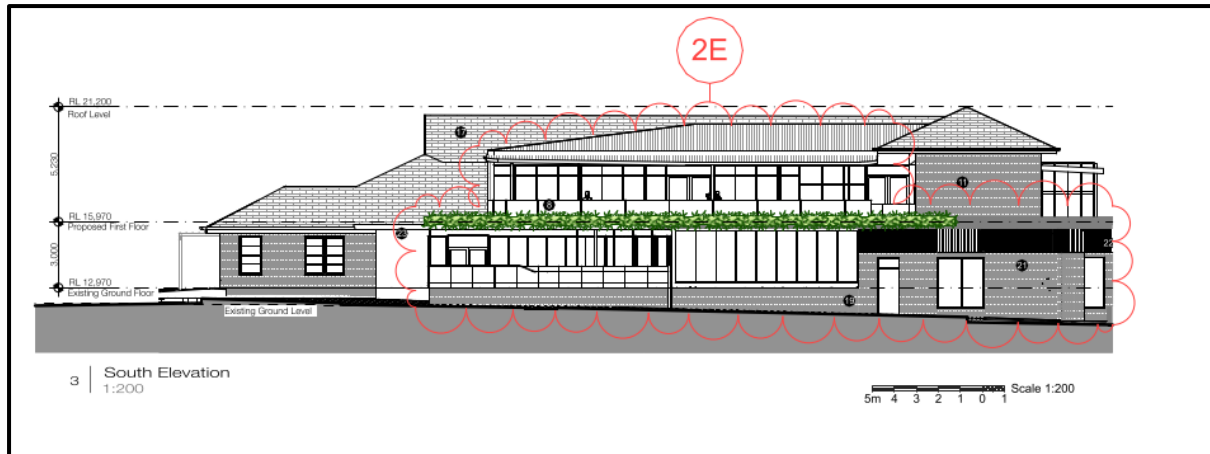


Figure 12: Proposed B1 South Elevation for Modification C

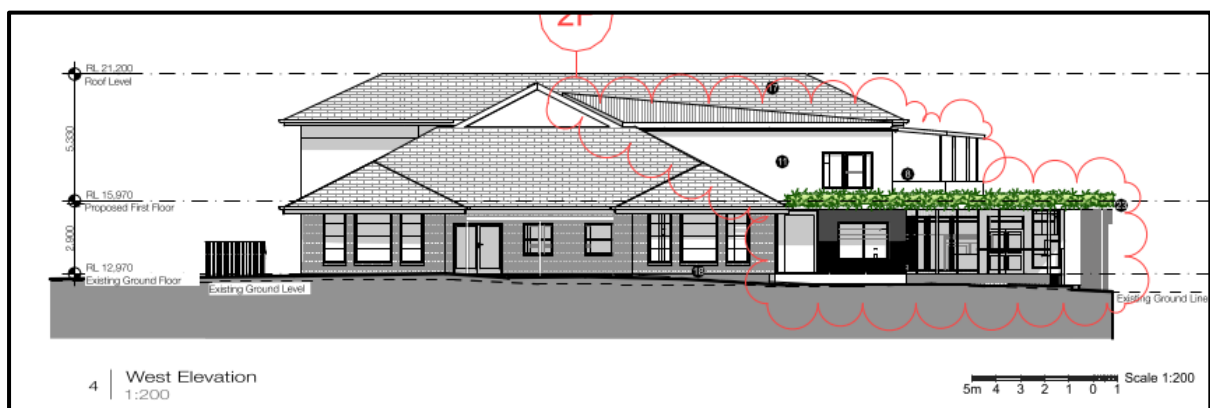


Figure 13: Proposed B1 West Elevation for Modification C

Building B7/B8

Building B7/B8 on the western side of the site was approved for 20 rooms in two wings supported by a communal kitchen and dining space, lounge room, sitting area and garden areas to cater for lower care residents.

The modification amends the winged building into a single form to become a multipurpose function room and flexible community space, including garden shed and work shed (including change to building footprint, orientation, and extent).

Despite the roof features, the building remains single storey.

Changes proposed for building B7/8 are shown in figures 14-17 below:



Figure 14: Approved B7/8 Ground Floor Plan for DA-1183/2016/A



Figure 15: Proposed B7/8 Ground Floor Plan for Subject Modification C

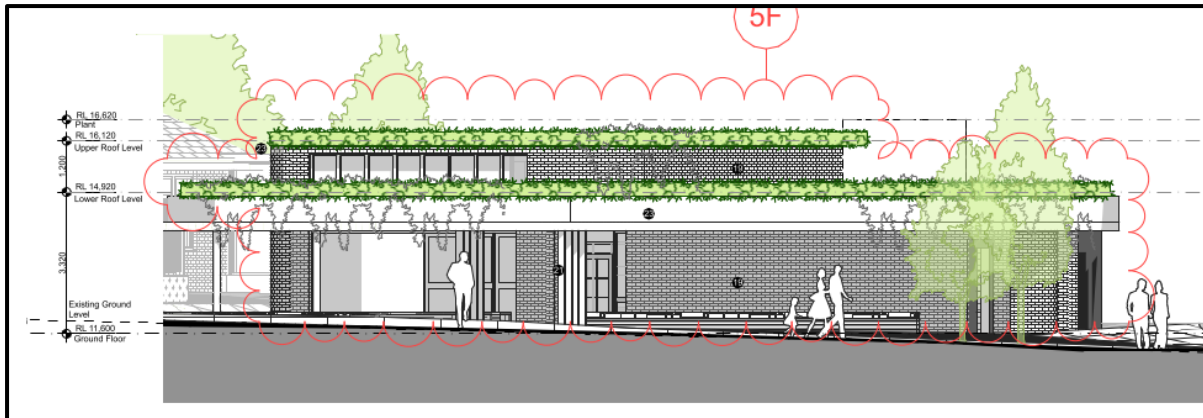


Figure 16: Proposed B7/8 West Elevation for Subject Modification C

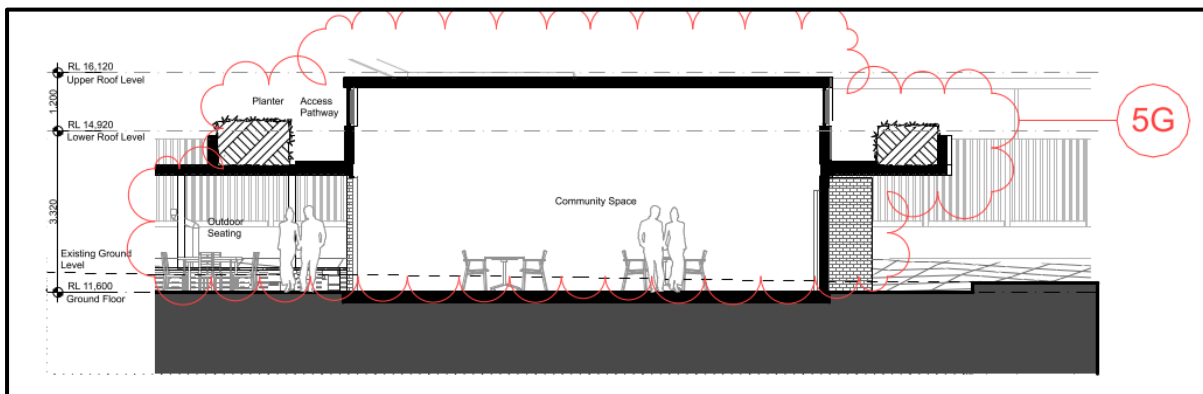


Figure 17: Proposed B7/8 Section for Subject Modification C

Building B10 (amended to B10A & B10B)

Building B10 was approved as a three-story crucifix-form building comprising four wings radiating from a central space containing communal and administrative facilities, including:

- Basement car parking for 33 cars, including two accessible spaces, and plant.
- Ground floor lounge area and shop for visitors and residents, administration spaces including two meeting rooms, and 1 'cottage' with a TV lounge, sitting and dining areas, utility spaces, and 15 single rooms with ensuites.
- Two separate 'cottages' within the first floor including a TV lounge, sitting and dining areas, utility spaces, and eight single rooms with ensuites in the northern two wings, and seven single rooms with ensuites in the southern two wings (a total 30 rooms).
- The second floor mirrors the first floor, also providing 30 rooms and associated facilities.
- Ground floor fenced patio and outdoor area, and communal balconies on the floors above.
- 75 single rooms in total for seniors needing higher levels of care.

The proposed modification reconfigures the building into two separated wings joined by a skybridge on levels 2 and 3 and through a basement tunnel which also connects to building B1 for staff access.

Specifically, the key changes comprise:

- Reception and administration facilities moved to the expanded B1 Building.

- Co-locating rooms that would have otherwise been provided as part of Buildings B7/B8, B10, and B11 (though this is a reduction to the total number of rooms).
- Basement car parking was deleted and relocated to at grade along Katie Walsh Avenue.
- Basement services relocated in clusters along a sprawling tunnel, including additional staffroom and bathrooms.
- 15 single rooms in each wing on each floor (90 in total) with central communal areas per wing including kitchen/living/dining/laundry.
- A central footpath connection and drop-off zone off Thomas Avenue, and communal outdoor areas adjoining the garden space to the north and east.
- Large communal balcony areas to the north and east and smaller areas to the south.
- 90 single rooms in total for seniors needing higher levels of care.

This building is identified as a Residential Care Facility which is a type of Seniors Housing.

Changes proposed for building B10 are shown in figures 18-31 below:

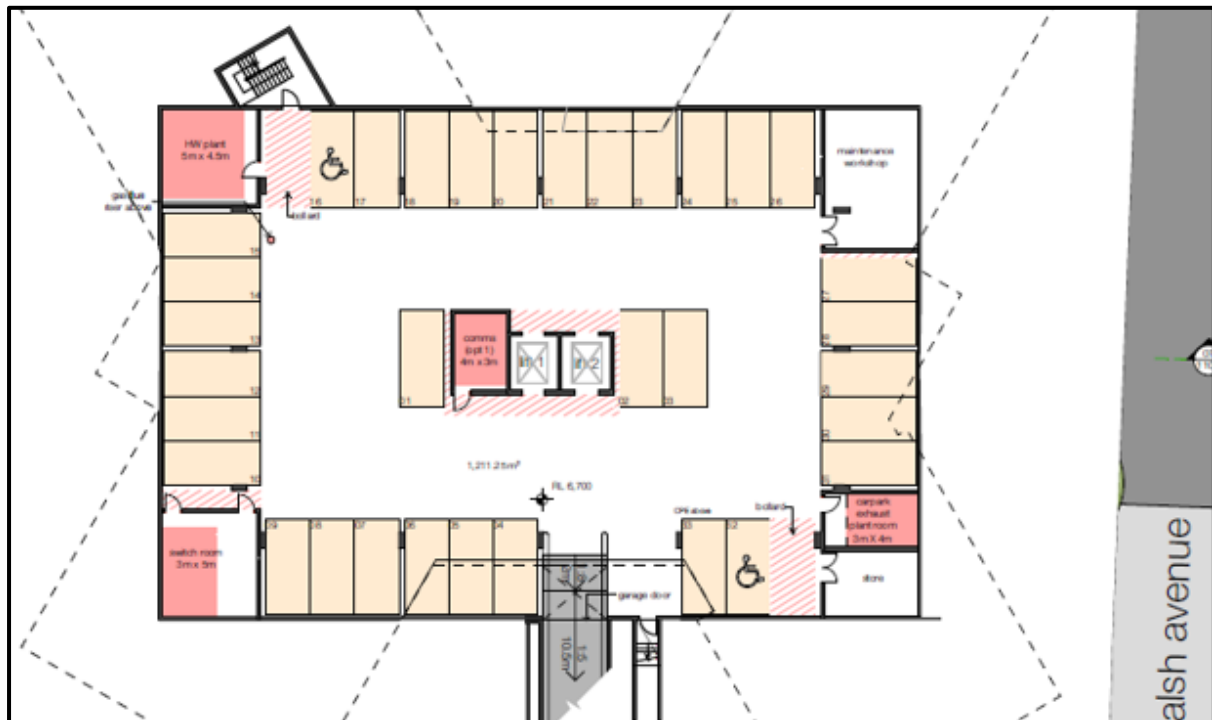


Figure 18: Approved B10 Basement Plan for DA-1183/2016



Figure 19: Approved B10 Ground Floor Plan for DA-1183/2016

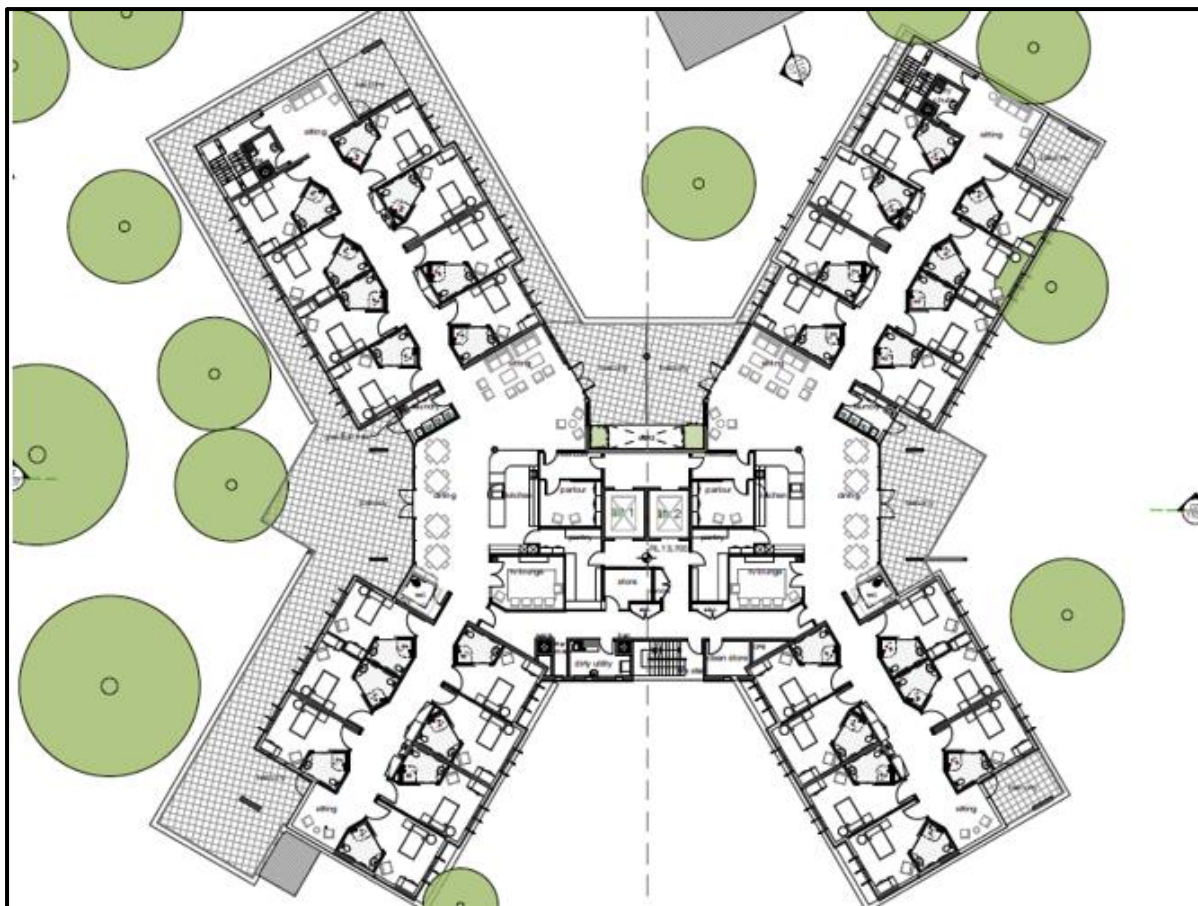


Figure 20: Approved B10 First Floor Plan for DA-1183/2016

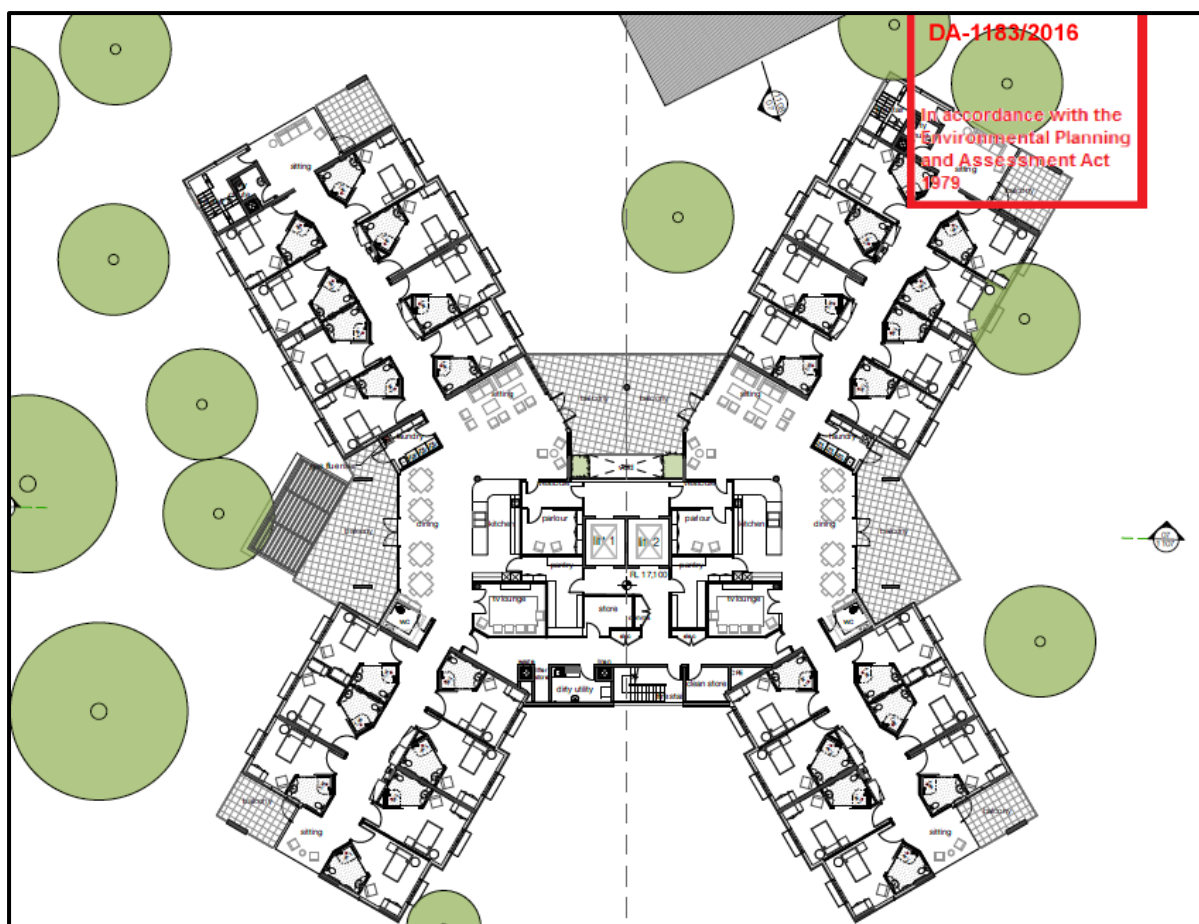


Figure 21: Approved B10 Second Floor Plan for DA-1183/2016

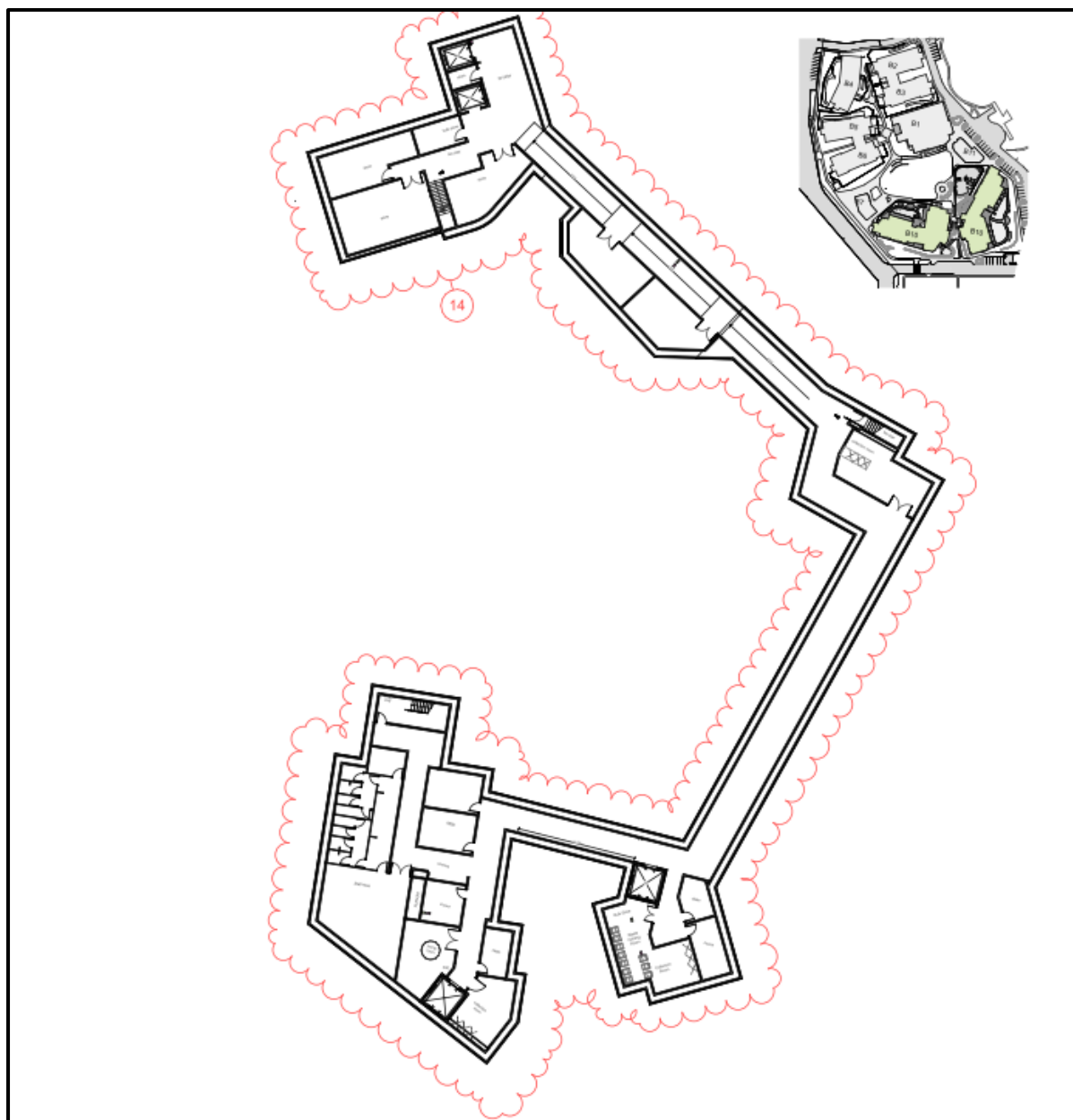


Figure 22: Proposed B10A/B & B1 Basement Plan for Subject Modification C

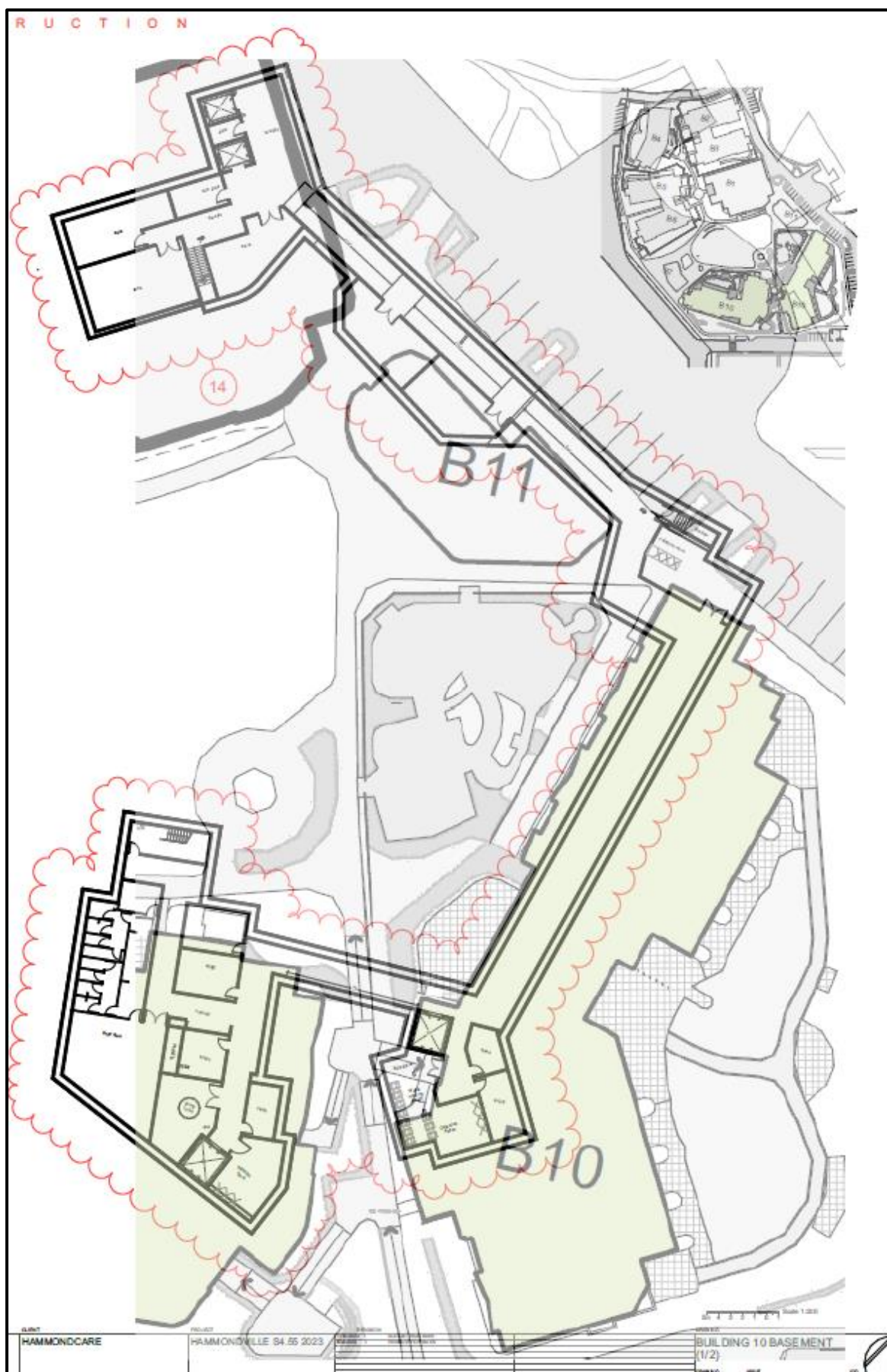


Figure 23: Rough overlay provided by applicant showing the basement connection between Buildings B10A/B and B1



Figure 24: Proposed B10A/B Ground Floor Plan for Subject Modification C



Figure 25: Proposed B10A/B First Floor Plan for Subject Modification C



Figure 26: Proposed B10A/B Second Floor Plan for Subject Modification C

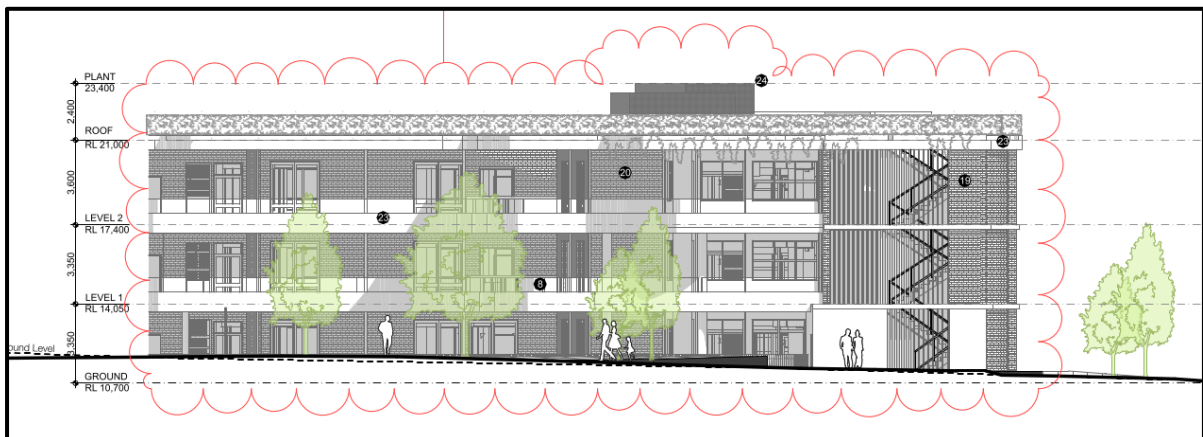


Figure 27: Proposed B10A West Elevation fronting Judd Ave for Subject Modification C



Figure 28: Proposed B10A South Elevation fronting Thomas Ave for Subject Modification C



Figure 29: Proposed B10B East Elevation fronting Katie Walsh Ave for Subject Modification C



Figure 30: Proposed B10B South Elevation fronting Thomas Ave for Subject Modification C

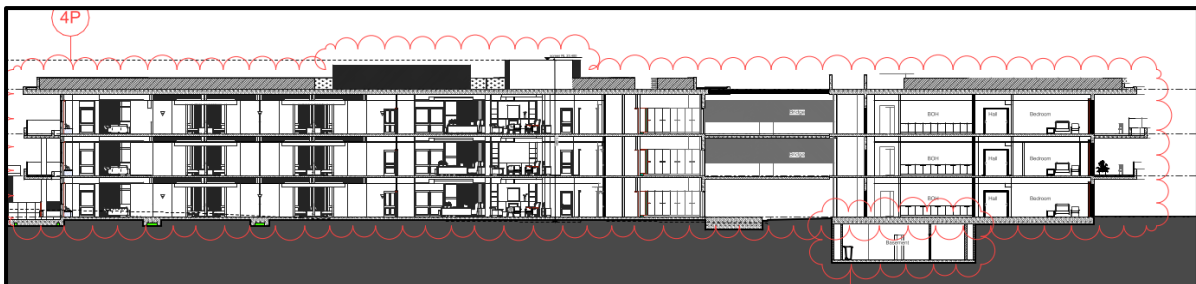


Figure 31: Proposed B10A/B Section for Subject Modification C

Building B11

B11 was approved with a similar typology to B7/B8 on a smaller scale, being 10 rooms, 5 within each wing, connected with communal facilities including an open plan seating, dining and kitchen area for lower care residents.

The residential building is amended to be a 'shop' building (change to building footprint and extent), with associated facilities including amenities (public facilities located close to the village green, pavilion, playground, and exercise area), loading, and storage.

The 'shop' is not a separate, commercial land use but part of the operation of the Aged Care Facility, being a place for residents with dementia to replicate the act of going to a shop.

Changes proposed for building B11 are shown in figures 32-35 below:

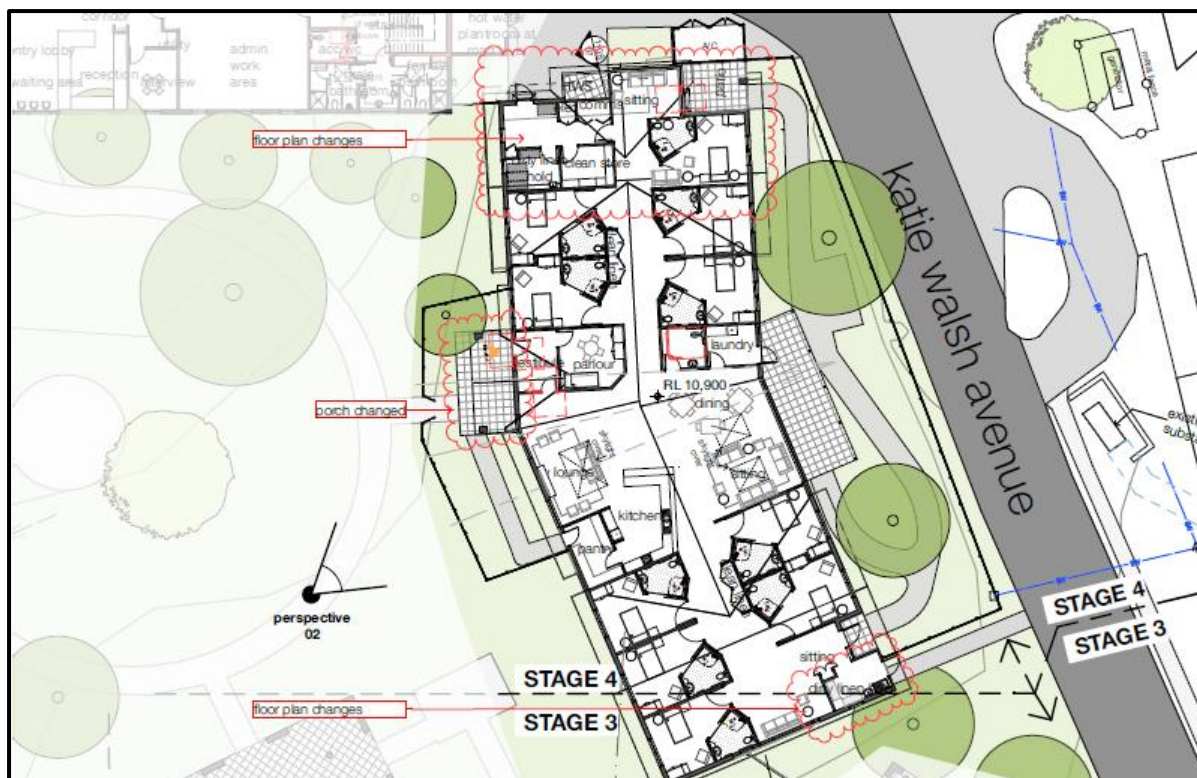


Figure 32: Approved B11 Ground Floor Plan for DA-1183/2016/A

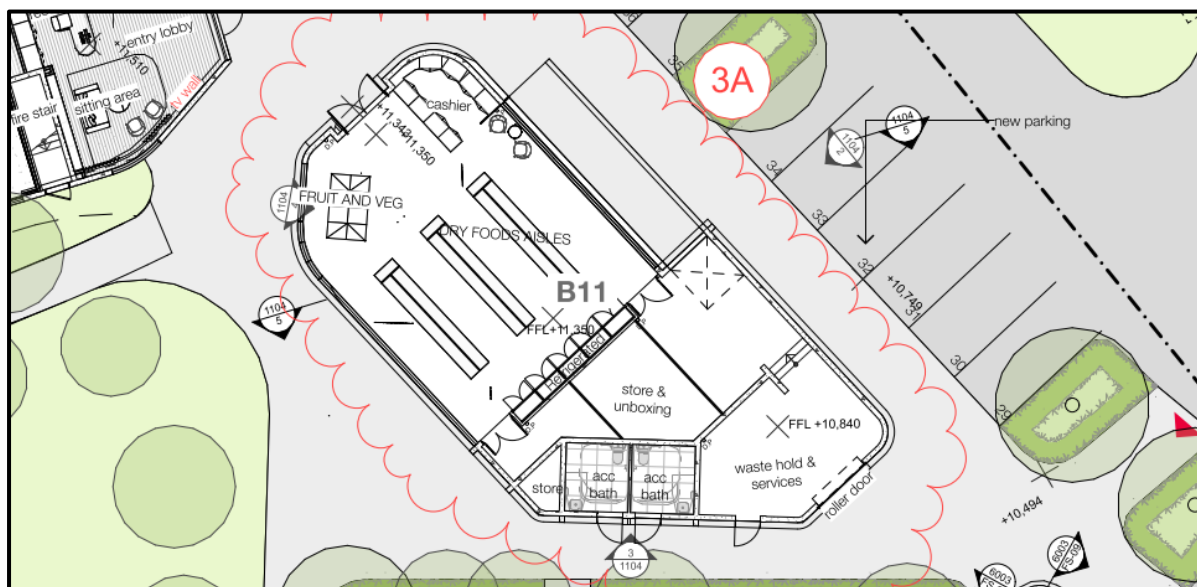


Figure 33: Proposed B11 Ground Floor Plan for Subject Modification C

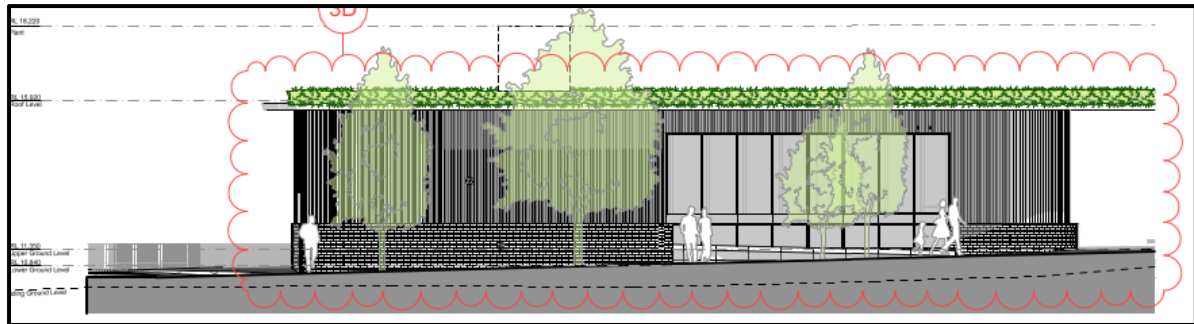


Figure 34: Proposed B11 East Elevation for Subject Modification C

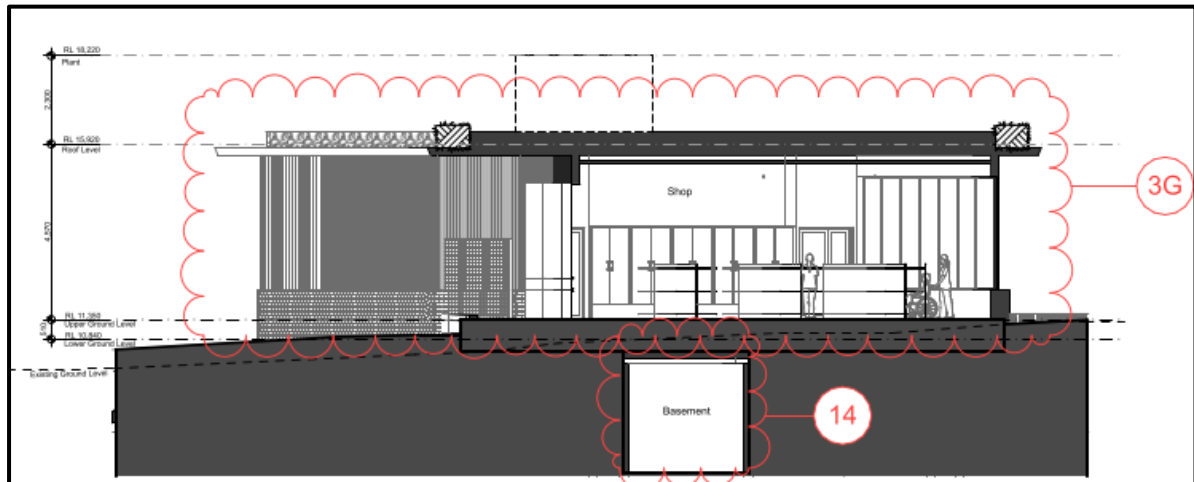


Figure 35: Proposed B11 Section for Subject Modification C

Landscaping/Communal Space

The approved development sited series of cottages around a central village green. The proposed modification increases the size of the village green, adding a resident garden, seating areas, lawn space and rotunda and improved connections and footpath grading throughout the site.

Changes to proposed landscaping are shown in figures 36-38 below:



Figure 36: Approved Landscape Plan for DA-1183/2016/A



Figure 37: Proposed Landscape Plan for Subject Modification C

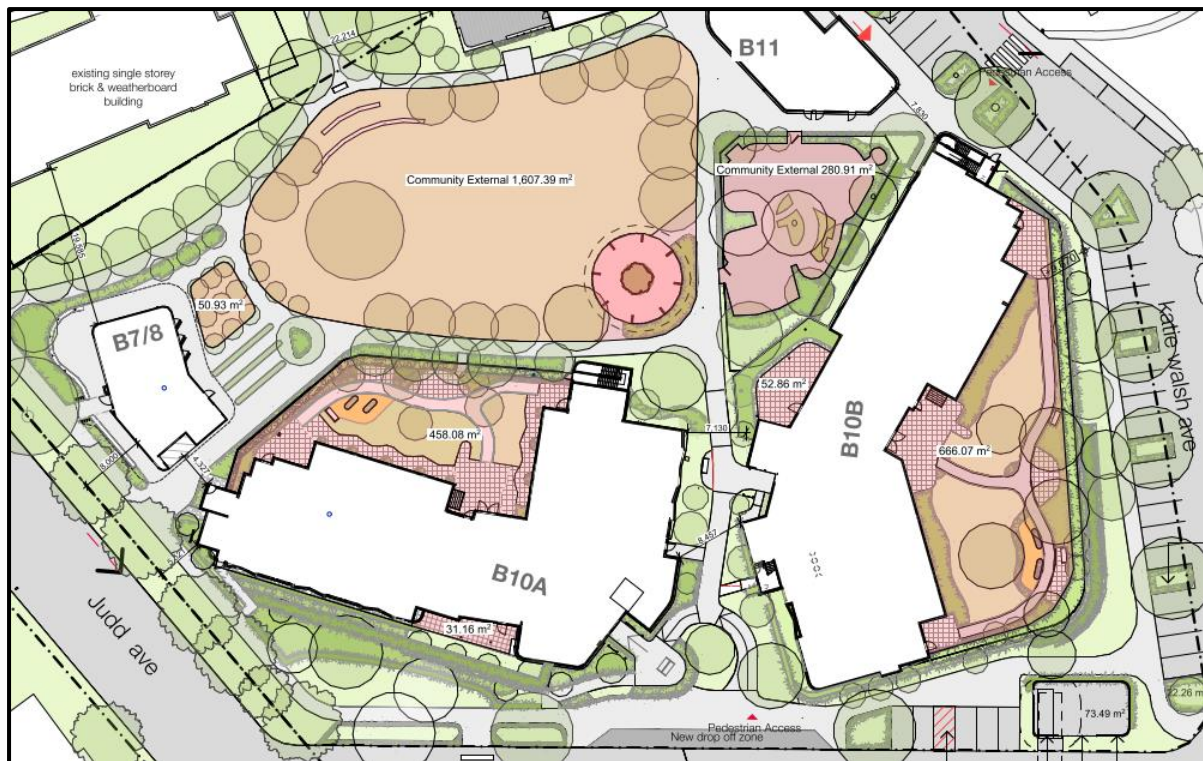


Figure 38: Communal Space highlights for Subject Modification C

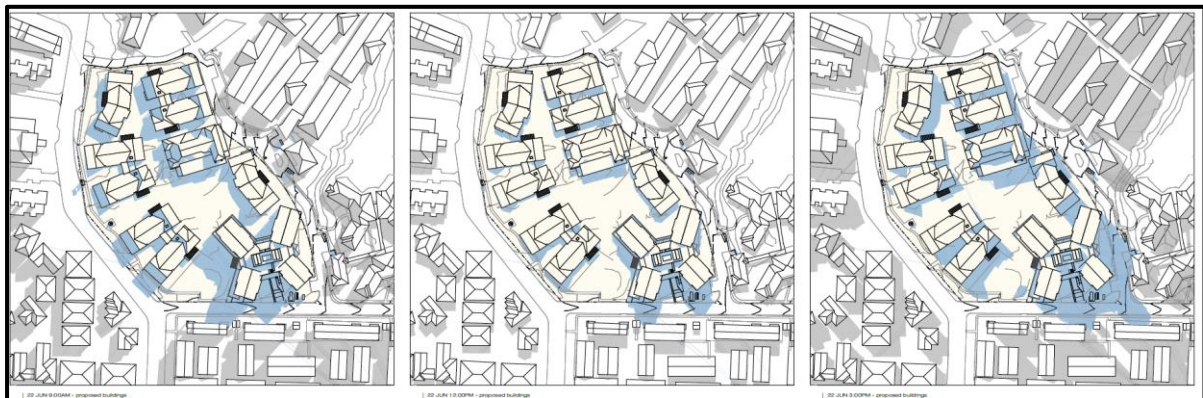


Figure 39: Submitted Shadow Diagrams for approved development DA-1183/2016

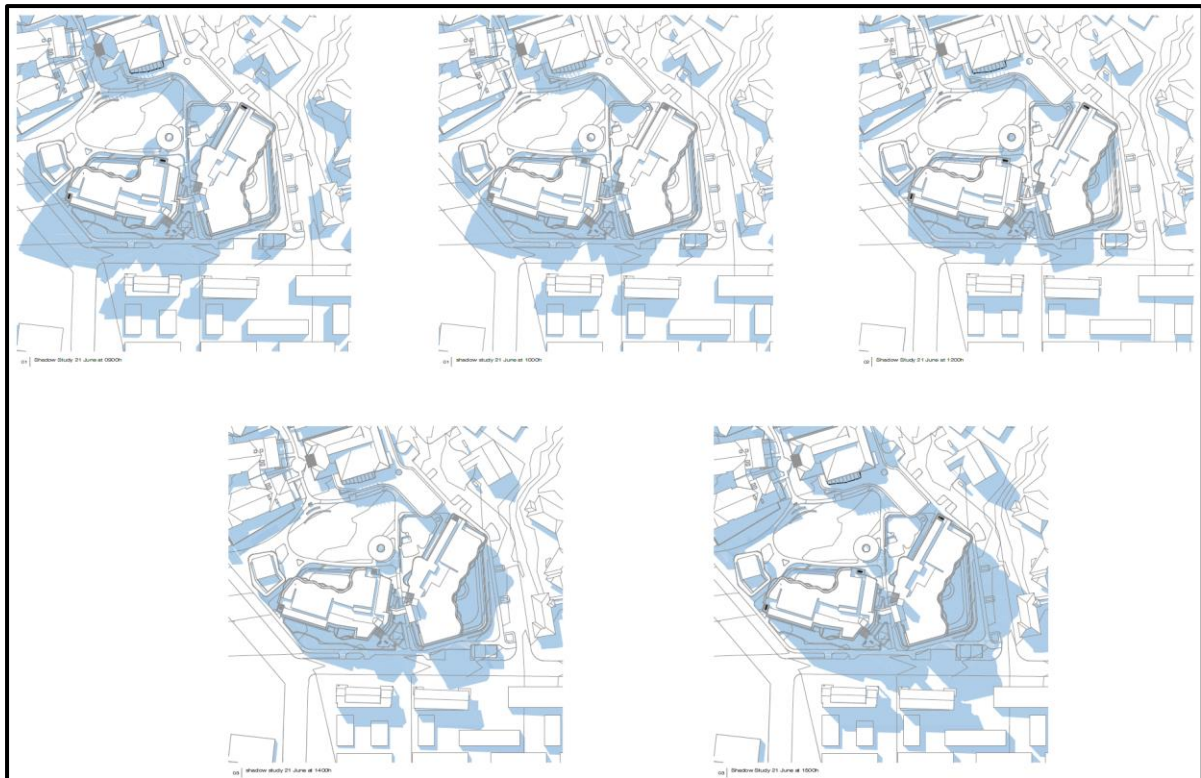


Figure 40: Submitted Shadow Diagrams for subject modification C.

Operation

As a managed residential care facility, the development will operate 24 hours a day with the main shift times being:

06:00 – 14:00;
14:00 – 21:00; and
21:00 – 06:00.

There will be approximately 81 staff present over the entire HammonCare Facility site at any one time, however at the crossover of shifts there may be up to 130 staff present for approximately 1 hour due to handover briefings. A Plan of Management has been submitted in support of the proposal. Aside from the reduction of the maximum number of residents from 155 to 140, the proposed operation details remain largely the same.

4.1. Modification to Conditions

The proposal will amend Condition 1 to update the plans and reports and make minor changes to the staging table to accommodate the modifications proposed. Additional conditions have been added or amended at the request of Council's referral sections, to include GTAs and requirements of external referral agencies, to accommodate the changed parking arrangements, and to add developer contributions.

4.2. Design Excellence Panel Briefing

The concept proposal was presented to the Design Excellence Panel (DEP) on 8 February 2024. The panel supported the application subject to recommendations to the applicant to be reviewed/approved by Council.

The comments from the meeting are provided below with a response from the Applicant and Council.

Panel Comment	Applicant Response	Council Comment
4.1 Context		
The Panel acknowledged the planning complexities surrounding this development relating to the current s4.55 modification application, however, reiterated that the purpose of the DEP is to assess design excellence and provide design recommendations, in this regard. Whether the development can be considered substantially the same, as defined withing the EP&A regulations is not for the Panel to determine or advise upon within this forum.		Noted. But the panel was specifically asked whether there was design consistency between the applications. The panel does advise below that the proposal is 'an appropriate evolution of the scheme' and 'The selection of materials achieves a connection with the existing precinct whilst reflecting the continuing evolution of aged care housing and aligning with the social history of the site.' which implies design consistency, or at least design reference.
It is acknowledged that the current Panel members were not present at the original DEP meeting back in 2017. In this regard, the Panel requested the applicant to specifically reference to the proposed changes, helping to direct the ensuing recommendations.		Noted.
It is noted that the modification application pertains to Stage 3 and 4 of the original development consent.		Noted.
The Panel appreciated the quality of the applicant's presentation, which achieved a succinct explanation of the complex proposal. It appears well-considered and is an improvement on the existing (approved) development application.		Noted.
The Panel supports the direction in which the applicant has progressed		Noted.

<p>this proposal and considers it an appropriate evolution of the scheme. The current proposal may not strictly adhere to the previous DEP recommendations (2017), however, the Panel accepts and is comfortable with the progression of the design.</p>		
4.2 Built Form + Scale		
<p>The Panel sought clarity regarding a potential presence of any heritage significance within the precinct, that the original design may have been attempting to maintain and whether the applicant was seeking to preserve a reference to the quality and/or selection of materials within the broader precinct as part of the design of the new buildings.</p>		Noted.
<p>In reply, it was noted by the applicant that the original buildings are not heritage listed but have significant evolving social history that the original DA aimed to respond to, providing an appropriate approach for the period.</p>		Noted.
<p>The selection of materials achieves a connection with the existing precinct whilst reflecting the continuing evolution of aged care housing and aligning with the social history of the site. This is supported by the Panel.</p>		Noted.
<p>The proposed changes to building B10 (now B10A and B10B) are supported by the Panel as the:</p> <ul style="list-style-type: none"> o relationship between the built form and streetscape is improved; 		Noted.

<ul style="list-style-type: none"> o circulation/movement into and around the building is enhanced; o introduction of the large north facing balconies is a positive change providing a better overall northerly aspect (solar amenity); and o the shift away from the problematic crucifix building arrangement and institutional aesthetic provides a more relevant, considered and site responsive approach. o Open space and landscaping is improved. 		
The Panel appreciates the insertion of the two smaller community buildings at either end of the central open space, which from a master planning and urban design perspective works well, providing a much more generous, accessible, and permeable landscape area at the heart of the precinct.		Noted.
The Panel queried the bathroom arrangements as the proposal appears to increase the total wet area by having the shower located between the door and the toilet. The intention behind this layout was explained by the applicant and was designed specifically for dementia aged care to provide a direct line of sight from the bed to the toilet. The Panel appreciates the specificity of designing for aged care and supports the proposal in this regard.		Noted.
4.3 Density		
The Panel notes that the maximum permissible FSR under the LLEP is 0.5:1, the original DA approved 0.34:1 and the current		Noted.

modification seeks a negligible change to the FSR with a GFA increase of only 185sqm proposed.		
The Panel acknowledges that the maximum permissible building height under the LLEP is 8.5m, however, the original consent (DA-1183/2016) approved a height of 13m for building B10 only, with the current proposal (DA-1183/2016/C) seeking an increase of only 200mm for buildings B10 A & B. This is supported.		Noted.
The Panel supports the minor reduction in density (room numbers), increase in building height and FSR which overall greatly improves the opportunity for an open space and higher amenity across the site.		Noted.
4.4 Sustainability		
The Panel requests that the applicant provide a summary of the sustainability strategy for this project. As a minimum, the topics covered should be energy use, energy production, materials selection (longevity, ease of maintenance, embodied energy), landscape design to respond to future drought conditions and to mitigate heat island effect, waste minimisation in construction, how the design supports operational sustainability, how the design considers flexible use over time as aged care needs change.	The ESD Opportunities Report submitted with the original application is replaced with a revised ESD report. Refer also updated SEE overview in Section 9.2.7.	<p>Improved.</p> <p>It is acknowledged that the revised ESD Report is provided, in which detailed responses to the DEP comments regarding sustainability have been provided. The responses are considered acceptable at this stage.</p> <p>However, further clarifications and recommendations need to be addressed at the detailed design stage as outlined below:</p> <ul style="list-style-type: none"> It is recommended to install solar panels on all buildings to enhance self-sustainability and reduce reliance on external energy sources for each building. Roof plans must be submitted for Buildings B1, B7/8, B10A/10B, and B11. These plans should provide

		<p>detailed layouts of the proposed green roofs, solar panels, and skylights. Additionally, the roof materials for B7/8, B10A/B and B11 are unclear. Therefore, a revised material palette should be submitted to reflect these features.</p> <ul style="list-style-type: none"> To promote natural ventilation, it is suggested to install ceiling fans in each room. This will help improve air circulation, reduce the need for air conditioning, and enhance overall energy efficiency.
4.5 Landscape		
The Panel commends the landscape design for the extents of open space included within the proposal as well as the improved relationship with the built form and consideration of movement and connectivity throughout the precinct.		Noted.
The inclusion of the amenity elements within the communal open spaces including the functional gardens and play spaces are supported by the Panel. These aspects are crucial in facilitating increased periods of visitation and repeat visitation, which will indirectly provide significant health and wellbeing benefits to the residents.		Noted.
The Panel notes the large village lawn which includes a considerable open turf area. It is recommended that consideration for 'Connecting with Country' and an indigenous and/or sensory planting proposal that offers a stronger connection to nature be explored. The revised	The landscape architect has revised their landscape design to adopt this recommendation. The landscape architect has investigated a stronger connection to Country/nature by introducing indigenous sensory planting, including Cabbage Palms with	<p>Addressed.</p> <p>The applicant's responses in the SEE report have been noted. The proposed landscape work is considered comprehensive and supportive.</p> <p>It is noted that the proposed rainwater tanks are indicated</p>

landscape design should capitalise on the health and wellbeing benefits associated with nature interaction.	textured bark and leaves and sensory plants to the gardens in the playground and around the rotunda. Further detail is provided in the revised landscape architect's documentation. Section 9.2.7 of this SEE has been revised to suit this updated approach.	near the Pavilion to the west, as shown in the civil engineering plans, which may potentially conflict with the proposed landscape tree planting. It is required that the applicant indicate the location of the rainwater tanks on the landscape plan during the detailed design stage to ensure that the proposed landscape work will function effectively.
In addition, it is recommended the proposal incorporate an increase in canopy coverage (across the site and) within the landscaped areas including around the village lawn to help establish a cooler microclimate. A reduction in the overall turf area and an increase in tree plantings and vegetation is recommended by the Panel.	The landscape architect has revised their landscape design to adopt this recommendation. The extent of turfed area has been reduced, additional seating options have been introduced alongside increased vegetation and landscape embellishment, as well as the incorporation of additional trees around the central green/ rotunda. Further detail is provided in the revised landscape architect's documentation. Section 9.2.7 of this SEE has been revised to suit this updated approach.	Improved. Additional trees have been proposed in the central lawn area and around the streets. The overall tree canopy coverage for the site needs to be submitted in the detailed design stage. It is highly recommended to achieve a 40% canopy coverage for the site, aligning with the Greater Sydney Tree Canopy Coverage target by 2036.
4.6 Amenity		
The Panel notes, the removal of the basement car park (under building B10) and provision of 42 at grade car parking spaces accessed off Thomas and Katie Walsh Avenues (the quantum of parking is two less spaces than originally approved) and there is a potential visual impact of the at-grade parking along Katie Walsh Ave. The Panel requests canopy trees be provided to shade at least 50% of car parking spaces.	As recommended, the landscape design has been amended to increase the canopy coverage to on-grade parking spaces. Previously, 31% of parking spaces received canopy coverage. Additional trees proposed have increased the coverage to 51%, exceeding the Panel's request. Further detail is provided in the revised landscape architect's documentation. Section 9.2.7 of this SEE has been revised to suit this updated approach.	Addressed. It is understood that the reduction in parking spaces is a result of the reduction in the number of rooms (a deduction of 15 rooms). A 51.4% canopy coverage is proposed for the at-grade parking area.
4.7 Safety		

<p>The panel recommends that the safety by design principles be applied specifically to the long corridors that are in the basement level, with the understanding that staff may be unaccompanied in these spaces.</p>	<p>The architect has embedded Safety by Design measures to the basement corridors including:</p> <ol style="list-style-type: none"> 1. A designated staff room is provided at the basement level below building 10A providing 2 outcomes, it increases the number of staff moving through the basement and ensures that the night shift staff do not need to leave the secure building. 2. Lift access will be card controlled. 3. Points for CCTV cameras will be provided to monitor entry points and lift doors. 4. The eastern most section of the corridor has been adjusted to not pass behind the fire stairs but to pass in front with improved sightlines. <p>Refer the revised Design Verification Statement for detail.</p>	<p>Addressed.</p> <p>The applicant's responses in the SEE report and Architectural Design Statement have been noted.</p> <p>The proposed safety measures outlined in the above documents must be implemented during the construction stage including:</p> <ul style="list-style-type: none"> • Basement layout as per the architectural drawing No.1105(A) Issue J • Lift access will be card controlled • Points for CCTV cameras will be provided to monitor entry points and lift doors
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5 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.

5.1. Section 4.55 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the *EP&A Act*. The matters include the following:

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

Comment: While the LEC in *Canterbury-Bankstown Council v Realize Architecture Pty Ltd [2024] NSWLEC 31* affirms that the consent authority may use whichever formula or test they find most useful to reach the conclusion that the proposal is substantially the same, the application of the four-step process in *Realize Architecture Pty Ltd v Canterbury-Bankstown Council [2023] NSWLEC 1437* is convenient in this case as the applicant has helpfully addressed the first two steps in their Statement of Environmental Effects. The four steps include:

Quantitative Differences – compare numerical differences between the proposed modified development and the original approved development.

Qualitative Differences – compare the subjective differences between proposed modified development and the original approved development.

Critical Elements – identify the critical elements of the proposed modified development and whether their removal, or change is so significant as to render it not substantially the same.

Balancing – balance the above considerations to form a subjective opinion whether the proposed modified development, on the whole, is ‘substantially the same’ as the original approved development.

These steps form the assessment below:

Quantitative Differences

The applicant has submitted that the quantitative differences are minor and are as follows:

- Total room reduction of 15, from 155 to 140 (-9.7%).
- Parking reduction of 2, from 134 to 132 (-1.5%)..
- Height increased by 200mm, from 13m to 13.2m (+1.5%)
- No change to number of storeys.
- GFA increased by 185sqm, from 31,543 to 31,728 (+0.6%)
- No change to FSR.
- Landscaped area increased by 2,163sqm, from 61,045sqm to 63,208sqm (+3.5% across the whole lot. +18% across the development site).

Council's opinion: Agreed, these numbers represent minor changes. The proposal is more reconfiguration than intensification.

Qualitative Differences

The applicant has argued that despite the qualitative differences, the proposal remains conceptually consistent as follows:

- The use remains the same, a seniors housing development.
- The heritage use as a *Hammondcare* facility remains the same.
- Stages 1 and 2 are constructed and occupied and are unaffected by the modification and make up a larger portion of the site than stages 3 and 4.
- While the parking is relocated from the basement to at grade, its impact is offset by increased landscaped area.
- The scale is the same as the approved development, and the splitting of building 10 into two separate forms does not increase environmental impacts of overshadowing or privacy.

- The increase in the height of the roof of building 10A/B is limited to services which are positioned so not visible from street level.
- The other modified buildings remain the same number of storeys and in the same locations.
- The landscaping and communal space has been improved, with more legible pathways throughout the site and more softening of the built elements.
- The building materials are still a pallet of greys offset by timbers, that the Design Excellence Panel (DEP) describes as achieving a connection with the existing precinct whilst reflecting the continuing evolution of aged care housing and aligning with the social history of the site.
- The DEP also refers to the proposed modification as an 'evolution of the scheme' and a 'progression of the design'

Council's opinion: Agreed. The cruciform building appears split in half, widened, and rotated. The increase in mass is the outcome of consolidating some of the rooms from single storey cottages. This mass is offset by increased landscaping, variation in the façade elements. It is also setback further from the internal roads and the impacts on the neighbouring development on site are reduced. The internal layout of spaces and arrangement of resident wings in residential care facilities generally informs the articulation of external forms and the breakup in the external façade, and this has remained consistent. The shape and use of the smaller buildings have changed, but the consistency in design concept and materiality assists in forming an opinion that the overall essence is the same.

Critical Elements

The approved development is for seniors housing in the form of a residential care facility with ancillary services, landscaping, and parking. Which presents as:

- 10 buildings surrounding a central landscaped area, with greater height and mass sited to the south.
- 8 single storey buildings (some joined) containing single aspect rooms with shared dining and lounge.
- One three-storey building containing single aspect rooms with shared dining and lounge.
- One two-storey building providing ancillary services.
- Some parking within the basement of the three-storey building, but most of it in a single carpark, away on the east side of the site.
- All well within a much larger site that also contains seniors housing, parking, and landscaping.

The proposed modified development is for seniors housing in the form of a residential care facility with ancillary services, landscaping, and parking. Which presents as:

- 10 buildings surrounding a central landscaped area, with greater height and mass sited to the south.
- 5 single storey buildings (some joined) containing single aspect rooms with shared dining and lounge.
- The three-storey building is split into two (but joined on three levels), containing single aspect rooms with shared dining and lounge.
- One two-storey building and two one-storey buildings providing ancillary services.
- Some parking at grade along the streets on the east and south sides of the three-storey buildings, but most of it in a single carpark, away on the east side of the site.
- All well within a much larger site that also contains seniors housing, parking, and landscaping.

Significance of change:

The consolidation of some of the rooms from some of the single storey buildings into a reconfigured and split three-storey building and their replacement with single storey ancillary buildings is not significant enough of a change that the core concept - **of a residential care facility of 10 buildings surrounding a central landscaped area with greater height and massing to the south** - is no longer recognisable. Even though more of the massing is moved further south, not enough of the critical elements are changed enough to say that the modified proposal is not substantially the same.

Balancing

- There is very little change to the height, floor area, number of beds, number of parking spots, or amount of landscaped area.
- The design and scale remain mostly consistent.
- The critical elements remain largely unchanged.

The modified proposal will not change the intensity of the use, will improve the relationship to the public domain, and will not change the relationship to surrounding developments.

Conclusion

Espinosa in *Realise Architecture* at [65] found that to reach the conclusion that the proposal is 'substantially the same', the consent authority does not imagine the viewpoint of a person retuning in their Tardis the day after leaving the building constructed in accordance with the consent and returning back to the building constructed in accordance with the proposed modification and determining whether it was the same building, rather the consent authority considers if there are differences, and even if some of those differences, in isolation, may appear to be significant, ask on the whole and balance, is the proposal 'substantially the same'.

On the whole and on balance, the development is still a residential care facility of 10 buildings surrounding a central landscaped area with greater height and massing to the south, with minimal quantitative and minor qualitative changes. As such, the modified development will remain substantially the same development as that to which was originally granted approval.

(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, and

Comment: The approved development was identified as Integrated Development and the proposed modification referred to the NSW Rural Fire Service (RFS) pursuant to 100B of the *Rural Fires Act 1997*. The RFS reviewed the proposed modification and reissued General Terms of Approval to be imposed as a condition of consent.

*(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, and*

Comment: The proposed modification was required to be notified adjoining properties in accordance with Liverpool Community Engagement Strategy 2022 between 7 November 2023 and 22 November 2023.

- (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.*

Comment: The proposed modification was required to be notified adjoining properties in accordance with Liverpool Community Participation Plan 2022 between 7 November 2023 and 22 November 2023. Notwithstanding, no submissions were received.

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

The matters for consideration under Section 4.15(1) and reasons given by the consent authority are addressed in section 4.2 of the report below.

5.2. Section 4.15(1) of the EP&A Act

The following planning instruments have been considered in the planning assessment of the subject application:

- Existing Uses provisions pursuant to Division 4.11 of Part 4 of the Environmental Planning and Assessment Act 1979
- Existing Uses provisions pursuant to Part 7 of the Environmental Planning and Assessment Regulation 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Housing) 2021
- Liverpool Local Environmental Plan 2008
- Liverpool Development Control Plan 2008
 - Part 1 General Controls for All Development

5.2.1. Section 4.15(1)(a)(i) – Any Environmental Planning Instrument

(a) Existing Uses provisions pursuant to Division 4.11 of Part 4 of the Environmental Planning and Assessment Act 1979

The existing use rights were established for the development in the approved application DA-1183/2016, being the continuous, uninterrupted use of the site as a seniors housing purpose since 1953.

Council visited the site 22 May 2024 and confirmed that the seniors housing use had not since been abandoned and that Stages 1 and 2 of the approved development had been completed.

A change of use is not proposed as part of the subject modification proposal. The proposed modification is still an enlargement, expansion, and intensification of the existing use.

As such the proposed modification remains consistent with the existing uses provisions in the act.

(b) Existing Uses provisions pursuant to Part 7 of the Environmental Planning and Assessment Regulation 2021

The applicant has provided an assessment of the proposal against the Land and Environment Court (LEC) Planning Principles relating to existing use rights as formed in *Fodor Investments v Hornsby Shire Council (2005)* within the submitted statement of environmental effects. The principles include:

How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

The proposed bulk and scale of the development is considered acceptable. This is discussed throughout Part 4.2.1 of this report.

What is the relevance of the building in which the existing takes place?

No change of use of the existing use proposed.

What are the impacts on adjoining land?

The potential impacts to adjoining land are considered acceptable. This is discussed throughout Part 4.2.1 of this report.

What is the internal amenity?

The development has been assessed against the seniors housing provisions of the SEPP (Housing) 2021 and is considered acceptable with regards to internal amenity. This is discussed throughout Part 4.2.1 of this report.

Additionally, the modification application was accompanied by design verification statements which demonstrated continued consistency with the above principles by demonstrating general consistency with the Apartment Design Guide, and the Seniors Housing Design Guide where appropriate/applicable.

As such, the proposal remains consistent with the existing uses provisions in the regulations and the application can continue to rely on existing use rights.

(c) State Environmental Planning Policy (Resilience and Hazards) 2021

Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, a consent authority is unable to grant development consent unless it has considered whether the land is contaminated and, if so, whether the consent authority is satisfied that the land is suitable in its contaminated state or can be remediated to be made suitable for the purposes for which the development is proposed to be carried out. The proposed modifications give rise to the following considerations:

Pursuant to the above SEPP, Council must consider:

- whether the land is contaminated.
- if the land is contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.

The applicant submitted a combined stage 1 and stage 2 contamination investigation, and a remediation action plan to Council's Environmental Health Officers for review. Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, Council is also required to undertake a merit assessment of the proposed development. The following table summarises the matters for consideration in determining development application (Clause 4.6).

Clause 4.6 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	The land has contaminated soils as reports submitted by the applicant identify.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The RAP was submitted as part of this application. The land is considered suitable for its proposed residential use, subject to remediation works carried out in accordance with the contamination assessment and RAP, and subject to conditions of consent, as recommended by Council's Environmental Health Section.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	Conditions of any consent shall require the remediation of the land as per recommendations in the submitted contamination assessment and RAP.

Despite the proposed modifications, the proposal continues to satisfy the relevant objectives and provisions within the Resilience and Hazards SEPP 2021, subject to the imposition of conditions of consent.

(d) State Environmental Planning Policy (Biodiversity and Conservation) 2021

The subject land is located within the Georges River Catchment and as such the State Environmental Planning Policy (Biodiversity and Conservation) 2021 SEPP applies, Chapter 6 in particular. This Chapter generally aims to protect the environment of the Georges River system by ensuring that impacts of future land uses are considered in a state, regional, and local context.

The modification proposal was referred to Council's Land Development Engineers who reviewed the altered stormwater management and drainage plans. They raised no objections, subject to amended conditions. Accordingly, the proposed modifications would not alter the proposal's compliance with the provisions within the Biodiversity and Conservation SEPP 2021.

(e) State Environmental Planning Policy (Housing) 2021

The original application was approved with consideration of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP), which has been superseded by the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

Neither SEPP applies to the original application nor the subject modification application as they rely on existing use rights in respect to permissibility. However, the applicable provisions contained in the Housing SEPP immediately prior to the commencement of the December 2023 amendment¹ have been considered as part of the assessment of the modification proposal and are detailed in Attachment 2. Controls where the proposal warrants discussion are detailed below.

Provisions	Proposal	Compliance
Part 5 Housing for seniors and people with a disability		
Division 3 Development standards		
84 Development standards—general (2)(c) for development on land in a residential zone where residential flat buildings are not permitted— (i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building (iii) if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.	Residential Flat Buildings are not permitted in the R2 Zone. Building B10A/B: Approved: 13m Proposed: 13.2m The other buildings are 1 & 2 storeys and less than 9.5m high. Building B10A/B is not setback above the second storey.	Considered Acceptable See Height Discussion Below
Division 7 Non-discretionary development standards		
107 Non-discretionary development standards for hostels and residential care facilities—the Act, s 4.15 (a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building	Building B10A/B: Approved: 13m Proposed: 13.2m The other buildings are 1 & 2 storeys and less than 9.5m high.	Considered Acceptable See Height Discussion Below

The above compliance tables demonstrate that the proposed development remains generally consistent with the requirements of Seniors Housing part of the Housing SEPP. Accordingly,

¹ There have been 5 revisions of the Housing SEPP since lodgement. Affecting this application are:

- The 14 December 2023 revision, which renumbered a few relevant clauses and included consideration of the Seniors Housing Design Guide (SHDG) but did not include savings provisions for modification applications.
- The 15 March 2024 revision, which added savings for modification applications made but not determined on or before 14 December 2023 in Schedule 7A (8)(1)(b).

Effectively, the SHDG does not apply to this modification application. However, Council notes that the applicant has provided consideration of SHDC Section 12: Design Principles for Residential Care Facilities in a design verification statement which, in conjunction with their consideration of the relevant provisions of the ADG, helps to establish continued consistency with the LEC's Existing Use Rights planning principle.

the development can be considered consistent with the LEC planning principles for proposals on land with existing use rights.

Building Height Discussion:

The proposal has an approved a variation to the building height development standard contained in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 relating to aged care facilities. This SEPP did not apply to the DA as it was proposed under existing use rights, notwithstanding it had been taken into consideration for assessment purposes.

The Seniors Housing SEPP has since been superseded by the State Environmental Planning Policy (Housing) 2021 (Housing SEPP), and it is taken into consideration for the proposed modification, which continues to rely on existing use rights.

Clause 84(2)(c) (i) & (iii) of the Housing SEPP prescribes a maximum building height of 9.5 metres and two storeys for aged care facilities, with additional storeys setback with plans that project at an angle of 45 degrees inwards from all side and rear boundaries of the site. Building 10 has an approved overall height of 13 metres and includes three stories with no setback above the second storey. The proposed amended overall height of building 10A/B is 13.2 metres, an increase of 200mm, no change to the third storey setback is proposed.

The height increase is supported by the Design Excellence Panel, noting that the relationship between the built form and the streetscape is improved, circulation into and around the building is enhanced, and the shift away from the problematic crucifix arrangement and institutional aesthetic provides a more relevant, considered and site responsive approach.

For the approved development, the applicant provided the following response to the original 8m Seniors Housing SEPP height limitation in the context of the proposed upgraded aged care facility, as follows:

“Building 10 is a larger three storey building that is situated in the south eastern portion of the site and will cater to high care needs residents. It will replace an existing 2 storey building with a pitched roof and is required in order to achieve a critical mass of patients to support the associated level of care and resident support facilities on the site.

The roof ridge of Building 10 is 13m which is taller than the LEP height limit of 8.5m for the surrounding area. Nevertheless, the building has been positioned and designed to nestle comfortably within the suburban streetscape. The proposed height is considered acceptable because:

- it is situated at the lowest point of the site and therefore it does not present as a dominant feature of the streetscape, particularly when viewed from Judd Avenue;
- it will not result in an overdevelopment of the site, with the total GFA remaining substantially less than the maximum permitted;
- it facilitates a continuation of the suburban landscape setting by reserving land for open space that would otherwise need to be developed for a lower density facility in order to maintain the required resident numbers;
- adequate separation is provided to existing and future buildings at the site;
- there is an appropriate transition in height to the adjacent 2 storey buildings across Thomas Avenue;
- the building is situated within the centre of the Hammond Care site and will not result in any unacceptable impacts, including privacy or overshadowing, to adjoining properties or buildings;
- it will not result in the loss of any significant views or the interruption of vistas; and
- it will allow for the continuation of the site's social heritage by facilitating a range of affordable accommodation options in accordance with the HammondCare philosophy.”

Though the shape of building 10 is reconfigured and some of the bulk is moved southwest towards Thomas Avenue, the proposed modification remains consistent with the points raised above by the applicant and accepted by Council for the approved development.

For the approved development, the applicant confirmed that the independent living units situated directly opposite Building 10 and to the south have an overall building height of 7.2m. While there is a 5-6m height difference between these buildings and Building 10, the applicant comment that a transitional height relationship will be formed between these buildings is considered likely and thus Building 10 was considered to propose an acceptable height with regards to its relationship with those buildings. The proposed increase in height of 200mm is so small it is unlikely to impact the transitional height relationship between building 10A/B and the buildings across Thomas Ave.

In addition to this, the development is not considered likely to cause unreasonable overshadowing or visual privacy intrusions to the independent living units to the south as it is considered remain to be sufficient building separation provided between these buildings across Thomas Avenue.

Figure 39 demonstrates the extent of shadows cast by approved Building 10 to the independent living units at 9am, 12pm and 3pm during the winter solstice. The shadows cast onto these buildings by Building 10 were not considered unreasonable in that case. Figure 40 demonstrates the extent shadows cast by the proposed Building 10A/B to the independent living units at 9am, 10am, 12pm, 2pm and 3pm during the winter solstice. The extent of the shadows cast onto these buildings by the proposed Building 10A/B is less than those of the approved development and so are not unreasonable in this case.

For the approved development the functionality of Building 10 was noted in the consideration of the 13m building height proposed. In order for HammondCare to provide high level services to dementia patients, patient capabilities and their proximity to services are the key elements in shaping building design. Accordingly, a three-storey building with centralised services and accessibility to all storeys was proposed in order to provide the most efficient care possible to the intended occupants. This centralised building also assists in ensuring an internal layout that is responsive to the characteristics of high-care dementia patients and is easy to navigate. Providing a centrally focused building that maximises the service core rendered through a repeated floor plate over three levels, as opposed to being spread throughout three ground level buildings, is likely increase the effectiveness of services rendered to occupants and is therefore considered an acceptable impetus for seeking a variation to the Seniors Housing SEPP 8m height standard. The proposed modification spreads the crucifix shape into two buildings, but the services are still centralised over a repeated floorplate and connected by a sky bridge and basement tunnel. As the service delivery and operational needs for the building are unchanged, it is still appropriate to note them in consideration of the proposed Building 10A/B.

In the absence of potential unacceptable environmental impacts to adjoining buildings and uses within the HammondCare site as a result of Building 10 (Building 10A/B) being increased from 13m high to 13.2m high, the case for a purpose built three-storey facility that lends itself to providing more effective services to high-care dementia patients remains acceptable in this circumstance. It should be noted that the upgraded facility would result in an unchanged FSR at the HammondCare site of 0.34:1, where the applicable FSR as per the LLEP 2008 is 0.5:1 and as per the Housing SEPP is 1:1.

Accordingly, the additional building height would not result in an unreasonable amount of additional floor area at the site and maintains the desired density within the R2 zone.

For the reasons discussed above, the proposed modification of height of Building 10A/B is considered acceptable and remains consistent with the LEC planning principles for proposals on land with existing use rights.

(f) Liverpool Local Environmental Plan 2008

Principal Development Standards

The LEP does not apply to the original application nor the subject modification application as they rely on existing use rights in respect to permissibility. However, the applicable Principal Development Standards have been considered as part of the assessment of the modification proposal and the matters generated are detailed in the table below.

CLAUSE	REQUIRED	APPROVED	PROPOSED	COMPLIANCE
4.3 Height of Buildings	Maximum Height 8.5m	B10:13m	B10A/B:13.2m (+200mm) Buildings B7/8 and B11 are less than 8.5m. B1 is 9.37m, but is existing and no increase in height is proposed.	Considered Acceptable, See Building Height Discussion above.
4.4 Floor Space Ratio	Maximum FSR 0.5:1	Total Site Area 92,780sqm GFA 31,543sqm FSR 0.34:1	Total Site Area 92,780sqm GFA 31,728sqm (+185sqm) FSR 0.34:1	Complies
5.10 Heritage conservation	Provides when consent is required for proposals in proximity of or relating to a heritage item and the assessment and conservation strategies required.	The site is listed as a heritage item for its social/cultural contributions to the development of the area and provision of service to elderly members of the LGA. Accordingly, the buildings are not heritage listed for their design or	The heritage value of the item is retained through the continued use of the development as seniors housing.	Complies, referred to heritage officer and no concerns have arisen from the proposed modifications.

		architectural significance/ The heritage value of the item is retained through the continued use of the development as seniors housing.		
7.8 Flood Planning	Development consent required. Development not to adversely affect flood behaviour and other properties. Occupation and evacuation to be safe. No detriment to environment. Compatible with flow of waters.	Flooding has been reviewed by Council's Flood Engineers who raise no objections to the subject proposal.	Flooding has been reviewed by Council's Flood Engineers who raise no objections to the subject proposal.	Complies

The proposed modifications would not alter the proposal's compliance with the rest of the provisions of the Liverpool LEP 2008.

5.2.2. Section 4.15(1)(a)(ii) – Any Draft Environmental Planning Instruments

No applicable draft EPIs.

5.2.3. Section 4.15(1)(a)(iii) – Any Development Control Plan

The modification proposal was assessed against Part 1 of the Liverpool Development Control Plan 2008 and the modification generates a number of matters for consideration, which are discussed in the compliance tables in Report Attachment 1.

The proposed modifications would not alter the proposal's compliance with rest of the provisions of the Liverpool DCP 2008.

5.2.4. Section 4.15(1)(a)(iiia) - Planning Agreements

There are no Planning Agreements which apply to the development.

5.2.5. Section 4.15(1)(a)(iv) - The Regulations

The Environmental Planning and Assessment Regulation 2021 requires the consent authority to consider the provisions of the BCA and the Australian Standards for demolition. Accordingly, appropriate conditions of consent will be imposed.

5.2.6. Section 4.15(1)(b) – The Likely Impacts of the Development

Head of Consideration	Comment
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Built Environment	There is very little change to the height, floor area, number of beds, number of parking spots, or amount of landscaped area. The design and scale remain mostly consistent. The modified proposal will not change the intensity of the use, will improve the relationship to the public domain, and will not change the relationship to surrounding developments. The impacts on the built environment are not considered to be greater than the approved development.
Natural Environment	The modified proposal is likely to have an improved impact on the environment through additional landscaping and consolidation of the built form. Appropriate conditions of consent applying to construction works will continue to apply to the development, mitigating impacts.
Social	The improved layout, additional services, and additional communal space is an improvement upon the approved development and considered to be a positive social impact.
Economic	The modified proposal is likely to generate similar economic impacts as the approved development through construction investment and ongoing employment.

5.2.7. Section 4.15(1)(c) - Suitability of the site

The site is considered to remain suitable for the proposal as was the case with the initial development application.

5.2.8. Section 4.15(1)(d) – Any Submissions made in relation to the Development

(a) Internal Referrals

The following comments have been received from Council's Internal Departments:

DEPARTMENT	COMMENTS
Land Development Engineering	Supported, subject to amended/additional conditions.
Flood Engineering	Supported, subject to amended/additional conditions.
Building & Compliance	No changes to building conditions.
Traffic & Transport	Supported, subject to amended/additional conditions.
Community Planning	No objection.
Waste Management	Supported, subject to amended/additional conditions.
Environmental Health	Supported, subject to amended/additional conditions.
City Design & Public Domain	Supported, subject to amended/additional conditions.
Heritage	No objection.

(b) External Referrals

The proposed modifications required referrals to the following external agencies:

DEPARTMENT	COMMENTS
NSW Rural Fire Service	At lodgement the proposal was identified as Integrated Development under Section 100B of the Rural Fires Act 1997 and referred to NSW RFS. In response to an RFS request for addition information dated 4 January 2024, the applicant provided an amended bushfire report dated 19 April 2024, stating that the stages in the subject

	modification are not on bushfire prone land, and as such the proposal does not fall under 100B. The RFS reviewed the amended report and reissued General Terms of Approval under 100B.
Jemena	No objection to the modifications as the works do not affect Jemena's assets.
Sydney Water	Supportive, subject to conditions.
Endeavour Energy	Advice provided for approved development remains applicable.

(c) Community Consultation

The modification proposal was notified in accordance with the Liverpool Community Engagement Strategy 2022 between 7 November 2023 and 22 November 2023. No Submissions were received.

5.2.9. Section 4.15(1)(e) - Public interest

As the proposed modified development is substantially the same as the approved development and does not result in any greater impacts, the proposed modifications are considered to remain in the public interest.

6 Development Contributions

Development contributions were levied on the original consent. Additional developer contributions are required for the proposed modification. These have been confirmed by Council's Contributions Officer and will be imposed as a condition of consent.

7 CONCLUSION

The application has been assessed having regard to the provisions of Section 4.15 of the EP&A Act 1979, and the Environmental Planning Instruments, including the applicable State Environmental Planning Policies, Liverpool LEP 2008, LDCP 2008, and the relevant codes and policies of Council.

Based on the assessment of the application, it is recommended that application DA-1183/2016/C be approved.

8 RECOMMENDATION

It is recommended DA-1183/2016/C seeking consent for the modification of DA-1183/2016, be recommended for approval subject to conditions of consent.

9 ATTACHMENTS

1. DCP Compliance Tables – TRIM NO: 219301.2024
2. SEPP (Housing) 2021 Compliance Tables – Trim No: 221209.2024
3. Architectural Plans – TRIM NO: 162226.2024
4. Modification of Development Consent – TRIM NO: 212645.2024