

NORTHERN BEACHES COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-159
DA Number	MOD2020/0431
LGA	Northern Beaches Council
Proposed Development	Modification of Development Consent DA2018/1332 granted for demolition works and construction of seniors living, including self-contained dwellings and a new residential care facility on a neighbouring lot
Street Address	Lot 100 DP 1114910, 207 Forest Way and Lot 7 DP 807906, 199 Forest Way, Belrose
Applicant/Owner	Catholic Healthcare Limited (Applicant) Lendlease Retirement Living Holding Pty Ltd (Owner)
Date of DA lodgement	30 September 2020
Number of Submissions	Two (2) submissions in support of the proposal
Recommendation	REFUSAL
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Section 4.55(2) Modification of the Development Consent granted by the Sydney North Planning Panel (SNPP)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • Warringah Local Environmental Plan 2000 (WLEP 2000)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1: Architectural Plans • Attachment 2: Statement of Modification, prepared by Ethos Urban • Attachment 3: Council original Assessment report on DA2018/1332 • Attachment 4: PLM Notes, dated 19 September 2019
Clause 4.6 requests	Not Applicable
Summary of key submissions	The submissions were in support of the proposal.
Report prepared by	Lashta Haidari –Principal Planner
Report date	27 January 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

The proposal involves modifications to the Development Consent DA2018/1332, granted by the Sydney North Planning Panel (SNPP), for demolition works and construction of major additions to Glenaeon Retirement Village, including four (4) residential building (Buildings A - D) comprising 60 self-care dwellings, and a new residential care facility on a neighbouring lot, with associated carparking, landscaping and public road modifications.

The proposed modification seeks to delete part of Condition No.3 to re-introduce Building D containing 5 dwellings. Condition 3 reads as:

3. Amendments to the approved plans

The following amendments are to be made to the approved plans on 207 Forest Way, Belrose:

- **Building A** - Plans are to be amended to wholly accommodate the footprint of Building A within the site boundary. No part of the building is to be located outside of the site boundary on Council land.
- **Building D** - Plans to be amended to delete Building D and that portion of the site is to be maintained as native vegetation.

The SNPP in its decision to approve the application requested that the Council and the applicant attempt to reach a resolution on the day regarding the Council's proposed deletion of Building D. Council and the applicant could not reach a resolution on the day and therefore the SNPP retained Condition 3 to delete Building D. The SNPP's "Reasons for the Decision" states in this respect:

"The Panel considered the applicant's request to delete Condition 3, which requires the removal of Building D, but on the basis of the design and information currently before the Panel it was decided to retain Condition 3"

The site is located within an area identified as "Deferred Lands" under Clause 1.3(1A) of the Warringah Local Environmental Plan 2011(WLEP 2011). The site is located within the B2 Oxford Falls Valley locality under Warringah Local Environmental Plan 2000 (WLEP 2000).

The proposed development is Category 2 development under WLEP 2000 as established by the SNPP, therefore, the development must be consistent with the Desired Future Character of the B2 Oxford Falls Valley locality. In this regard, the development, in its current form, does not satisfy the requirement of the DFC due to the environmental impact associated with the location of Building D as discussed in the referral section of this report.

Therefore, the proposal is not considered to pass the test of consistency and it's therefore recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Consent No. DA2018/1332 in the following manner:

To delete part of Condition No.3 to re-introduce Building D containing 5 dwellings. Condition 3 reads as:

1. Amendments to the approved plans

The following amendments are to be made to the approved plans on 207 Forest Way, Belrose:

- **Building A** - Plans are to be amended to wholly accommodate the footprint of Building A within the site boundary. No part of the building is to be located outside of the site boundary on Council land.
- **Building D** - Plans to be amended to delete Building D and that portion of the site is to be maintained as native vegetation.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development is constructed within the boundaries of the subject site.

There are no changes proposed to the overall height, bulk or scale of the approved development.

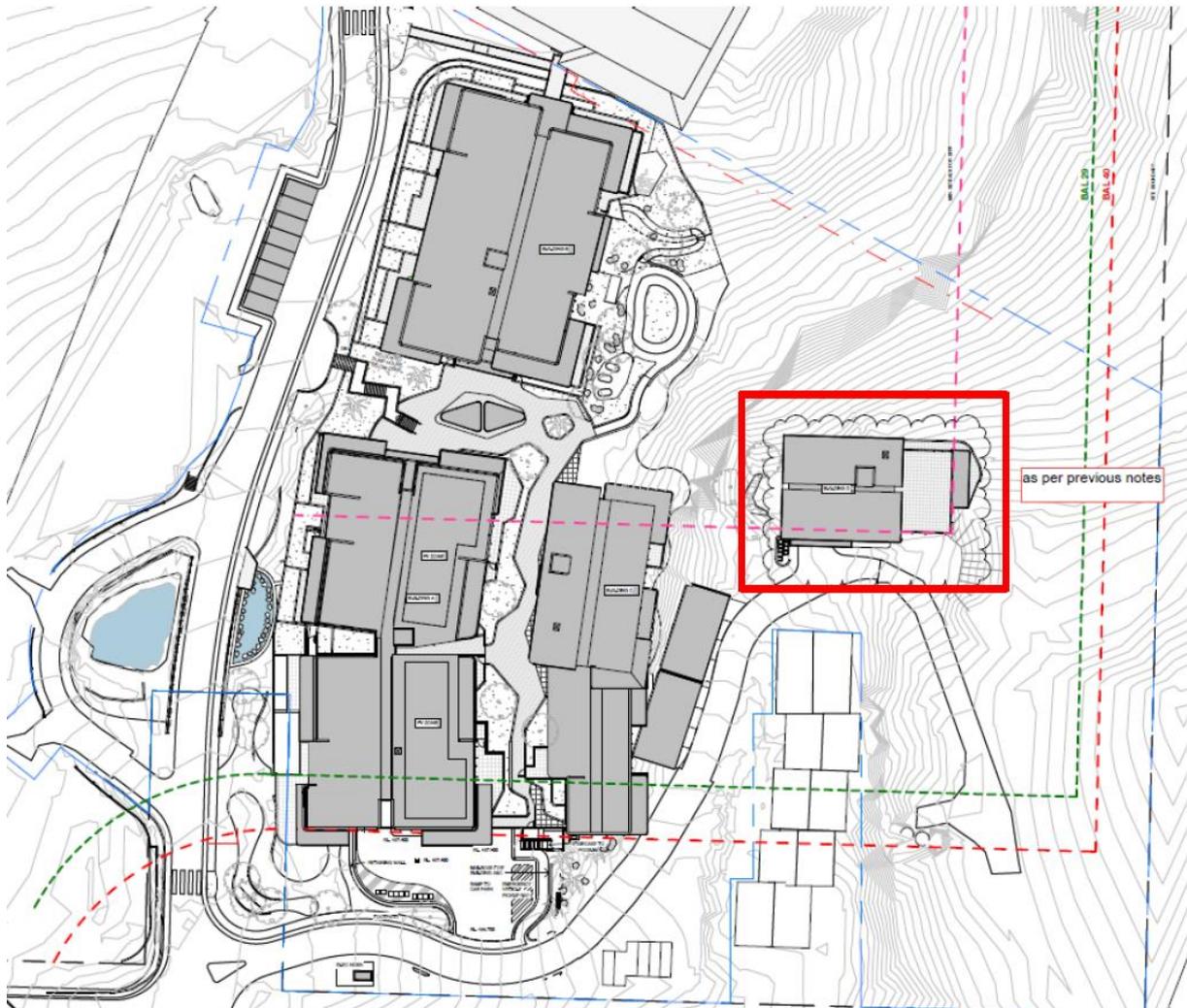


Figure 1 – Site Plan showing location of Building D in red (Source: PTW)

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the Associated Regulations. In this regard:

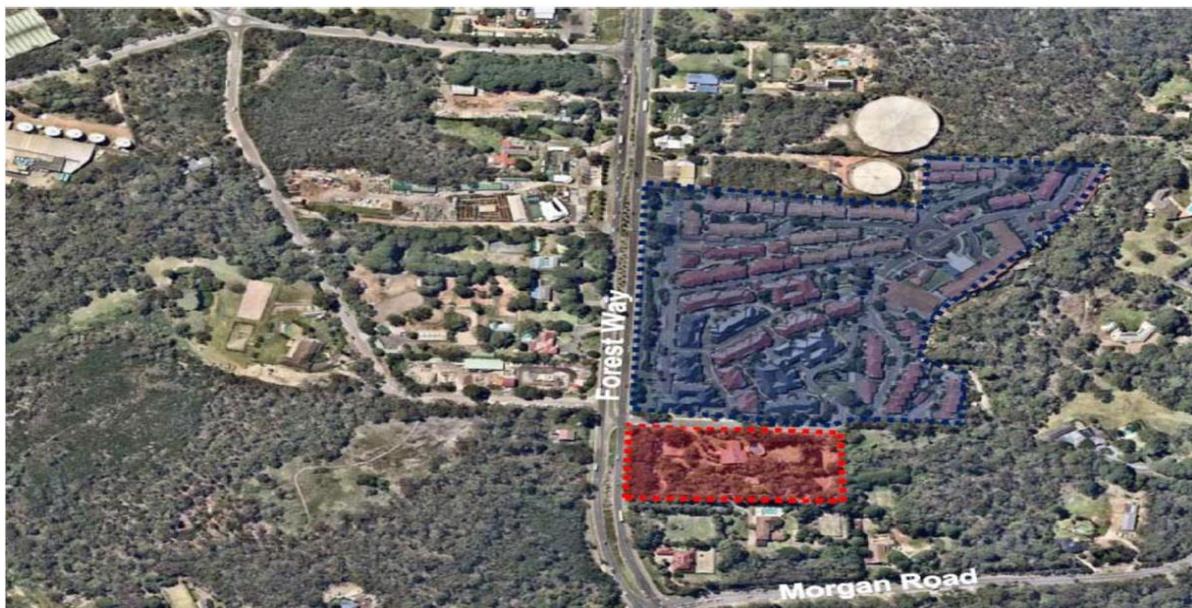
- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SITE DESCRIPTION

Glenaeon Village is an existing retirement living community located at 207 Forest Way, Belrose (Lot 100 DP1114910) that predominately consists of independent living units. Serviced apartments are also provided, together with community facilities such as a pool, gym and community centre. The site has an approximate 270m frontage to Forest Way and a bus shelter is located along this frontage that is serviced by a regular public bus service.

The site at 199 Forest Way site is located immediately south of the Glenaeon Village site on the opposite side of Glenaeon Avenue. This site has an approximate area of 1.2 hectares and frontage to Forest Way of 80m. A two storey dwelling house with various outbuildings currently exists on the site. The site has a moderate fall from Forest Way to the rear boundary of the site where an unformed road is located.

The location of the site is shown in the aerial image below (199 Forest Way, Belrose (outlined red) and the adjoining Glenaeon village (outlined in blue).



Site Map Showing Subject Site

RELEVANT BACKGROUND

Development Application No. DA2018/0995

On 10 August 2018, a DA (DA2018/1332) was submitted to Northern Beaches Council for Demolition works and construction of major additions to Glenaeon Retirement Village, including four (4) residential building (Buildings A - D) comprising 60 self-care dwellings, and a new residential care facility on a neighbouring lot, with associated carparking, landscaping and public road modifications.

On 1 May 2019, the Sydney North Planning Panel (SNPP) approved the DA subject to conditions of consent. Having consideration to Council's assessment and its draft conditions of consent, the SNPP requested the Council and applicant attempt to reach a resolution on the day regarding the Council's proposed deletion of Building D. Council and the applicant could not reach a resolution on the day and therefore the SNPP retained Condition 3 to delete Building D. The SNPP's "Reasons for the Decision" states in this respect:

“The Panel considered the applicant’s request to delete Condition 3, which requires the removal of Building D, but on the basis of the design and information currently before the Panel it was decided to retain Condition 3”

A pre-lodgement meeting was held with Council on 19 September 2019. The pre-lodgement meeting considered the environmental impacts associated with the proposed re-introduction of Building D.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1332, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
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) 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	The proposed reintroduction of Building D does not change the approved land use on the site and is therefore remains substantially the same development as the development for which consent was originally granted by SNPP.
b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) 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,	The application was referred to the NSW RFS as Integrated Development. In their response on 23 November 2020, the NSW RFS did not raise any objection to the proposed development.

Section 4.55 (2) - Other Modifications	Comments
and	
c) it has notified the application in accordance with: <ul style="list-style-type: none"> 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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and 	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2000.
d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55, 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 relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” In this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2000 applies to the notification of the application.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	All relevant provisions of the EP&A Regulation 2000 have been taken into consideration during the assessment of the development application and this modification application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<u>Environmental Impact</u> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah LEP 2000 section in this report. In summary, the environmental impact as it relates to the reintroduction of Building D is found to be unacceptable.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Social Impact</u> The proposed development will not have a detrimental social impact in the locality considering the nature and character of the already approved development.</p> <p><u>Economic Impact</u> The proposed development will not have a detrimental economic impact on the locality considering the nature and character of the already approved development.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The proposed modification does not alter the suitability of the site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	<p>The public interest has been considered as part of the application process. Overall, the public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed.</p> <p>The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable in terms of its impact on the natural environment. On this basis, the proposal is not considered to be in the public interest.</p>

EXITING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Community Participation Plan.

As a result of the public exhibition of the application, Council received two (2) submissions in support of the proposal.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p>

	<p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Contaminated Lands)	<p>Supported</p> <p>2018 DA referral to Environmental Health has already evaluated the contaminated land aspect of this development. No further investigation required.</p>
Environmental Health (unsewered lands)	<p>Supported</p> <p>Cardno provided information regarding the wastewater management for Building D, and proposed a 43kL tank to manage the extra volume. As it has not yet been decided which tank will be used, a condition is necessary to ensure an approved tank is installed.</p>
Landscape Officer	<p>Supported (subject to amended conditions)</p> <p>The proposal seeks to re-instate Building D, previously deleted by condition of consent Condition 3 under consent DA2018/1332 by the Sydney North Planning Panel, based on the environmental impacts on this part of the site. Additionally an alternative proposal for the onsite stormwater detention system is part of the modification application.</p> <p>It is considered worthwhile that the alternate onsite stormwater detention system is approved as this presents an opportunity for bushland regeneration.</p> <p>Building D predominately occupies an area of the existing constructed stormwater system. Updated arboriculture comments by Footprint Green are provided indicating that the modification proposal requires the removal of 15 existing trees, with many in close proximity to the development works area, and, regardless whether Building D is constructed or not require removal due to structurally defective characteristics or to comply with bushfire APZ standards. Additionally 11 Exempt exotic weeds species are proposed for removal by the modification proposal.</p> <p>Given that existing trees are required to be removed regardless of the proposal, the opportunity exists for regeneration of bushland canopy, and subject to replacement with 15 locally native trees in proximity to Building D to reduce the built form, and compliance with</p>

	<p>section 3.7 Landscaping, and Appendix 4 - Asset Protection Zone Requirements, of Planning for Bush Fire Protection 2019, Landscape Referral provide no objection. The existing landscape features of the site such as rock outcrops are to be retained in place and/or relocated for in nearby locations where impacted by development works.</p> <p>Landscape conditions 21, 39, 40, 57, and 70 remain, as related to this modification application. Condition 69 Landscape completion certification, shall be amended to include replacement canopy tree planting.</p>
<p><i>NECC (Bushland and Biodiversity)</i></p>	<p>Not Supported</p> <p>The proposal seeks to re-instate Building D, it's deletion from the scheme having previously been upheld as a condition of consent (Condition 2) to DA2018/1332 by the Sydney North Planning Panel in their correspondence dated 1 May 2019.</p> <p>For the purposes of the referral response I have reviewed the following information:-</p> <ul style="list-style-type: none"> • Section 4.55(2) Modification Application - 207 and 199 Forest Way, Belrose (Ethos Urban 31 August 2020); • Section 4.55 Plans Rev 05 (PTW Architects 2 April 2020); • Glenaeon Renewal Development Precinct 199 Forest Way & Precinct 207 Forest Way, Belrose Response to Northern Beaches Council Prelodgement advice for PLM2019/0180 Building Code & Bushfire Hazard Solutions Pty Limited 29 June 2020); • Ecological Statement by Keystone Ecological (4 August 2020); • Pre - lodgement Meeting Package – Modification to DA2018/1332 207 and 199 Forest Way, Belrose (Ethos Urban 21 August 2019); • Bushfire hazard information in the letter from Building Code & Bushfire Hazard Solutions Pty Limited dated 12 August 2019, • Bush Fire Assessment Report - Glenaeon Renewal Development (Building Code & Bushfire Hazard Solutions Pty Limited 9 August 2018); • Ecological Statement by Keystone Ecological (pre-lodgement no date); and

- Response to Reasons for Refusal DA2018/1332 199 and 207 Forest Way, Belrose (Ethos Urban April 2019).

Stormwater Impact

As commented as part of the pre-lodgement process, the stormwater management system proposed as part of the modification application should be implemented. This will result in an improved environmental outcome beyond that already approved. Incorporation of the OSD as part of the Glenaeon Renewal development provides an opportunity to rehabilitate land and establish a new upper catchment riparian system in the location of the existing and approved stormwater ponds should also be incorporated, and extended upstream for an additional ~32 metres, in place of proposed Building D.

Ecological Statement

The overall balance of tree retentions/removals under the approved development in comparison to the modified application is similar, with the modified proposal retaining 3 more trees. The important habitats that are present within the eastern and south-eastern portions of the site are acknowledged by the applicant and the relevant sub-consultants. These native vegetation communities and fauna species habitats have been historically reduced to a minor portion of the overall site (<10%) from the retirement village development, and will be further impacted by the inclusion of Building D.

The original reasons for refusal of Building D provided as part of the 2018 development application are still applicable to the modification application, and these are summarised in relevant sections below.

Bushfire Impact

The approved APZ was not supported by Biodiversity, however was included in the NSW RFS GTAs dated 17 October 2018. It is still the opinion that Building D is located closer to bush fire hazard, which exists both on the site and on the adjoining properties to the east. This native vegetation, whether assessed as Forest, a Forest remnant, or an asset protection zone is still a bush fire hazard. Therefore the location of Building D does not comply with the objective of Planning for Bushfire Protection, nor is it in

	<p>accordance with the NSW RFS pre-lodgement advice that the development should be located no closer to the bush fire hazard. This is confirmed in the BDAR which states that “The site is impacted by the potential for bushfire hazard from the connected vegetation along Snake Creek that has the potential to act as a ‘fire-run’.</p> <p>Previous comments from Council’s Biodiversity team, in relation to the inclusion of Building D and the requirements of Planning for Bushfire Protection 2006 (now 2019) are still relevant.</p> <p>In addition, the original Bush Fire Assessment Report (Building Code & Bushfire Hazard Solutions Pty Limited 9 August 2018) states “the radiant heat levels cannot strictly be complied with”, and this is considered to be a critical issue during fire suppression activities and during the evacuation of vulnerable people and staff in the event of an emergency.</p> <p>The report states (page 11) that vegetation to the north is Maintained Grounds and significant environmental features are identified as proposed Building B. However the approved plans locate Building B to the north-west, and instead vegetation hazard is located to the north. The existing development already relies upon an APZ within an adjoining allotment to the south, and any further reliance on APZs to the east that would extend off site must be avoided.</p> <p>While it is acknowledged that the approved development includes mitigation in the form of construction of the approved buildings to current bush fire construction standards, retro-fitting of existing structures, and hazard mitigation in the form of an APZ, this isn’t justification for putting additional vulnerable occupants at increased risk from bush fire especially as there is the “likelihood of increases in the severity and frequency of natural hazards which should be taken into account in land-use planning and building decisions” (Royal Commission into National Natural Disaster Arrangements – Report Commonwealth of Australia 2020).</p> <p>On this basis, Building D should not be supported.</p> <p>Assessment against WLEP 2000</p> <p>The proposed development must be planned</p>
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	<p>and designed in order to address and satisfy the following two clauses of the WLEP 2000.</p> <p>Clause 56 Retaining distinctive environmental features on sites, states that;</p> <p>Development is to be designed to retain and complement any distinctive environmental features of its site and on adjoining and nearby land. In particular, development is to be designed to incorporate or be sympathetic to environmental features such as rock outcrops, remnant bushland and watercourses/riparian zones.</p> <p>Based on the scale of impacts proposed, the proposal is considered inconsistent with Clause 56 Retaining distinctive environmental features on sites of WLEP 2000. It is recommended that siting and design of any future application demonstrate that the distinctive environmental features of the site and adjoining land have been retained and that impacts have been avoided and minimised.</p> <p>Clause 58 Protection of existing flora states that;</p> <p>The Development is to be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.</p> <p>As above, the development, including the bushfire Asset Protection Zone (APZ), vehicular access, increased stormwater runoff and ancillary structures will impact on areas that are currently represented by remnant indigenous flora, including canopy trees, understorey vegetation and native ground cover species.</p> <p>Native vegetation on the site will be directly and indirectly impacted and various threatened flora and fauna species have potential habitat on the subject property. The threatened fauna species <i>Cercartetus nanus</i> Eastern Pygmy-possum has been recorded directly adjoining the site, and suitable habitat occurs on the site. The development and ongoing modification of the APZ will not minimise impacts to indigenous flora that is also habitat for several threatened species, including fruiting Banksia species, the loss of hollows, and modification to the structure and composition of the bushland within the APZ.</p> <p>With regard to the APZs, it was always</p>
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	<p>understood that Building D was not the trigger for the entire village to be managed as an Inner Protection Area. The creation of an APZ across the entire lot was never supported by Bushland & Biodiversity due to the impacts to native vegetation, flora and fauna species, their habitats, and the fauna wildlife corridor. The proposal was not in accordance with the WLEP 2000 controls, especially clause 58 Protection of existing flora.</p> <p>Based on the information provided, the proposal is considered to be inconsistent with Clause 58 Protection of existing flora of WLEP 2000</p> <p>Conclusion</p> <p>Elements of the submitted modification may result in an improved environmental outcome, namely inclusion of an OSD tank and rehabilitation of the riparian zone/flow path, and this component of the application has some merit.</p> <p>The modification application submitted does not avoid or minimise direct and indirect impacts to native vegetation and habitat, including habitat for species recorded on site that have a high biodiversity risk weighting as identified by the Biodiversity Assessment Methodology (BAM). This includes impacts of the building footprint, prescribed impacts (caves, crevices and cliffs), the need to re-locate the existing stormwater management structures, and the creation and ongoing management of APZs.</p> <p>Building D will be located closer to the hazard than the existing development, and its inclusion is not in accordance with the objectives of Planning for Bushfire Protection 2006 and the original advice of the NSW RFS, and should not be supported from a bush fire risk perspective. Council's Natural Environment – Biodiversity section does not support the application as the proposal is inconsistent with Warringah Local Environment Plan 2000 Clauses 56 Retaining distinctive environmental features on sites, Clause 58 Protection of existing flora, as well as the requirements of Planning for Bushfire Protection 2006.</p>
<p><i>NECC (Riparian Lands and Creeks)</i></p>	<p>Not Supported</p> <p>The MOD2020/0431 is proposing to re-in state Building D at the same location as proposed in DA2018/1332.</p>

	<p>The removal of the building was conditioned (Condition 3) under the approval of DA2018/1332 by the Sydney North Planning Panel principally on the environmental impacts on this part of the site.</p> <p>Building D is located just below the cliff line and directly on the watercourse forming the headwaters of Snake Creek. The cliff line marks a key transition from overland sheet flow to channelized flow forming the Snake Creek watercourse source. The location of Building D on top of the Snake Creek source is in direct contradiction of the Warringah LEP2000 - B2 Oxford Falls Valley clause 56 to protect distinctive landform features on the site.</p> <p>The proposed development would negatively affect the ecological, geomorphic and landscape values of the area below the cliff line and specifically limits the opportunities to restore that section of the Snake Creek watercourse.</p>
NECC (Water Management)	<p>Not Supported</p> <p>This application was submitted while the Policy PL850 Water Management still applied (this has since been revised).</p> <p>This policy states that Council seeks outcomes for stormwater treatment as follows:</p> <ul style="list-style-type: none"> - integration of water sensitive urban design measures in new developments to address stormwater and floodplain management issues - Improve the quality of stormwater from urban development - Mimic natural stormwater flows by minimising impervious areas, reusing rainwater and stormwater and providing treatment measures that replicate the natural water cycle. <p>While the applicant has addressed the second point to a degree (filtration cartridges are not very effective at removed dissolved pollutants), they have not met council's objectives in terms of water sensitive urban design or replicating the natural water cycle. This can be achieved through measures that incorporate infiltration, evaporation and reuse (to reduce demand on potable water supplies and reduce rainwater discharged from the site).</p>

	<p>In addition, the conversion of detention basins to an OSD tank further reduces infiltration from the site.</p> <p>Filtration cartridges will only be accepted as part of a treatment train approach that achieves water sensitive urban design as described above</p>
<p><i>Strategic and Place Planning (Urban Design)</i></p>	<p>Not Supported</p> <p><i>The proposal seeks to re-in state Building D, it's deletion from the scheme having previously been upheld as a condition of consent (Condition 3) to DA2018/1332 by the Sydney North Planning Panel in their correspondence dated 1 May 2019, based on the environmental impacts on this part of the site.</i></p> <p><i>Notwithstanding comments from Council's Biodiversity and Stormwater officers, the location of Building D, essentially offset from the main development by quite a distance and set further down the escarpment represents an overdevelopment of the site, particularly in this significant escarpment. The building, by virtue of its isolation in the greater landscape also demonstrates little further merit that would warrant the re-instatement. The building does little to complement the view aspects from the buildings further up the escarpment and, as noted in the applicant's Response to Reasons for Refusal April 2019 cites economic reasons for the re-instatment of the building, over any further or enhanced benefits of built form outcomes across the greater site.</i></p> <p><i>The proposal is therefore unsupportable.</i></p>
<p>Development Engineer</p>	<p>Not Supported</p> <p>The modification cannot be supported for the following reasons:</p> <p>As required by the former Warringah Council OSD Technical specification section 3.3 <i>Minimum Information required for all Developments Except Single Residential Dwelling Developments</i> has not been provided.</p> <p>Hydraulic calculations and a hydraulic model has not been submitted for review .The preferred model to determine the site storage requirements and permitted site discharge is DRAINS.</p> <p>Catchment areas that drain to or by pass the</p>

	<p>On-site stormwater detention system re to be provided to Council for the DRAINS model review.</p> <p>Discharge outlet details are to be provided to demonstrate the prevention of scour within the riparian area.</p>
Traffic Engineer	<p>The proposed modification seeks to retain Building D whilst also reducing the impact of its footprint upon its surroundings by removing unnecessary retaining walls and reducing the impact of the remaining retaining walls upon the existing surrounding rock walls.</p> <p>The retention of Building D as proposed also allows for the redesign and placement underground of the integrated OSD system. The modified OSD system will be designed to meet Council's Water Management Policy and reduce the overall approved development footprint and environmental disturbance.</p> <p>The proposed modification will also set back construction works (through removing the storm water pond creation) further away from the eastern site boundary.</p> <p>The proposed reintroduction of Building D, sited to the north of the existing nine townhouses, will be 540m² (including patios and hardstand) in building footprint and is largely accommodated within the existing manmade sediment ponds which have an area of 420m². It is noted that increase of developed area with the reinstatement of Building D is offset by the proposed deletion of the two approved detention ponds that equate to a 740m². This results in 400m² of land that is approved to be disturbed now being retained in its natural state.</p> <p>Parking: Whilst there is no increase to the yield of the development, the parking numbers are deemed compliant. However the arrangement within Building D is no compliant with AS2890.1 which requires at least 1.0m from a blind aisle, in this case both spaces should be at least 1.0m from the side walls. This will allow for a forward ingress and egress.</p> <p>Conclusion: No objections are raised subject to the compliant design of the car park. This will be conditioned.</p>

External Referral Body	Comments
Transport for NSW (TfNSW)	TfNSW has reviewed the modification application and raises no objections to the Application, subject to the previous TfNSW comments dated 29 August 2018, 9 November 2018 and 12 June 2019 remaining applicable.
Ausgrid	Ausgrid has reviewed the modification application and raises no objection to the application.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.
NSW Rural Fire Services (NSW RFS)	The application was referred to the NSW RFS as Integrated Development. In their response on 23 November 2020, the NSW RFS has raised no objection to the proposed application.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions, which the proposal is considered acceptable against the applicable planning controls.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certificate was submitted with the original application. An updated BASIX certificate and Natethers rating reflecting the changes to proposed development has not been provided. The applicant has provided a letter dated 11 February 2020 indicating that a study was undertaken by Wood and Grive Engineers but the study relates to Building C and the proposed modification relates to Building D.

Accordingly, the application is considered deficient in this regard.

SEPP (Infrastructure) 2007

Clause 45

Clause 45 of the SEPP Infrastructure requires the consent authority to consider any DA (or an application for modification of consent) for any development carried out

- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);*
- *Immediately adjacent to an electricity substation; or*
- *Within 5 metres of an overhead power line.*

The amended application was referred to Ausgrid and who has raised no objection to the proposed modification application.

SEPP No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 provides that Councils must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and/or requires remediation for the intended land use.

The assessment of the original application concluded that the site was suitable for the proposed development and in addressing the requirement of this SEPP.

SEPP 65 - Design Quality of Residential Apartment Development

The SEPP requires an assessment and consideration of any application for residential flat development against the 9 Design Quality Principles and the matters contained within the associated “Apartment Design Guide”.

This application, as modified, does not materially alter the design of the development as relates to Building D such that it deviates from the original assessment and conclusions made by the Council in the original assessment of the application.

The original assessment found that Building D was satisfactory with regards to SEPP 65 and associated ADG.

SEPP (Housing for Seniors or People with a Disability) 2004 (HSPD) 2004

The DA WAS made pursuant to WLEP 2000 which permits development for the purposes of housing for older people or people with disabilities on land within Locality B2 Oxford Falls Valley. The Application not made pursuant to SEPP (HSPD) 2004.

STATE REGIONAL ENVIRONMENTAL PLANS

There are no SREPs applicable to the site.

LOCAL ENVIRONMENTAL PLANS

WARRINGAH LOCAL ENVIRONMENT PLAN 2000

Warringah Local Environment Plan 2000 (WLEP 2000)

WLEP 2000 applies to the subject land and the development application is made pursuant to this instrument. Under WLEP 2000, the subject site is within the B2 Oxford Falls Valley Locality.

The Desired Future Character (DFC) statement for the B2 locality states:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

The proposed development is Category 2 development under WLEP 2000 as established by the Sydney North Planning Panel, therefore, the development must be consistent with the Desired Future Character of the B2 Oxford Falls Valley locality. In this regard, the proposed re-introduction of Building D does not satisfy the requirement of the DFC in that the natural landscape, i.e. landforms and vegetation are not protected or enhanced due to the environmental impacts associated with the location of Building D as discussed in the referral sections of this report and as detailed in the attached report on the original development application.

Based upon the above considerations, the modification application is found to be inconsistent to with the DFC statement for the B2 Oxford Falls Valley locality as it results in unacceptable impact on the vegetation and ecological values of the site.

Built Form Controls for Locality B2 Oxford Falls Valley

No changes are proposed to the approved built form of the development. The non-compliance associated with Building D's height was addressed under Clause 20 of the original assessment report, where it was found to be satisfactory.

General Principles of Development Control

Clause 12(1)(a) of WLEP 2000 states that prior to granting consent, Council must be satisfied that the proposal is consistent with the relevant general principles of development control contained in Part 4 of WLEP 2000.

The following relevant General Principles of Development Control as contained in Part 4 of WLEP 2000 are applicable to the proposed modification:

General Principle	Applies	Comments	Complies
Clause 56 Retaining Unique Environmental Features on Site	Yes	The distinctive environmental features of the site are that the subject site is assessed by Council's Natural Environment sections, whom has advised that the application cannot be supported for the reasons provided in the referral section of this report.	No

		Based on the above advice, the application is not consistent with the requirements of Clauses 56 and 58 and this issue has been included as a reason for refusal.	
Clause 58 Protection of Existing Flora	Yes	Refer to assessment provided under Clause 56.	No
Clause 60 Watercourses & Aquatic Habitats	Yes	The application was referred to the Riparian Section of Council's Natural Environment Unit who advises (see 'Internal Referrals' in this report) that that the development in its current form is inconsistent with the requirement of this Clause.	No
Clause 63 Landscaped Open Space	Yes	The application was referred to the Landscape officer who advises (see 'Internal Referrals' in this report) that the application can be supported subject to modified.	Yes (subject to condition)
Clause 76 Management of Stormwater	Yes	Council's Development Engineer has reviewed the proposal and raised a number of issues regarding the stormwater drainage design, which has been addressed in the referral section of this report. As inadequate stormwater details have been submitted, compliance with the requirements of Clause 76 – Management of stormwater has not been achieved. This issue have been included as reasons for refusal.	No
Clause 60 Watercourses & Aquatic Habitats	Yes	The application was referred to the Riparian Section of Council's Natural Environment Unit who advises (see 'Internal Referrals' in this report) that that the development in its current form is inconsistent with the requirement of this Clause.	No

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal, as amended, will not result in any impact on threatened species, populations or ecological communities or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)

The proposal, as amended, is consistent with the principles of CPTED.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The proposal has been assessed in accordance with Section 4.55(2) and the heads of consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 (as amended).

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- All relevant and draft Environmental Planning Instruments
- Warringah Local Environment Plan 2000

In accordance with Part 3 of Schedule 2 of the EP&A Act, the Application is referred to the Sydney North Planning Panel for determination.

The S4.55 (2) application before the Panel seeks to modify Development Consent No. DA2018/1332 as described in this report. The proposed modifications have been assessed as resulting in a development that is found to be substantially the same development as that originally approved by the SNPP Panel.

The assessment of this application has found that the application is deficient in identifying the relevant environmental and ecological impacts associated within the subject site, as identified by relevant expert's comments in the referral section of the report. Council's Development Engineer has also indicated that there is insufficient information submitted with the application to assess the impact of the proposed stormwater works for the site.

Accordingly, it is recommended that modification application be refused for the reasons detailed below.

RECOMMENDATION (REFUSAL)

That the Sydney North Planning Panel, as the consent authority, refuse to grant consent to Modification Application No. Mod2020/0431 for Modification of Development Consent No. DA2018/1332 granted for demolition works and construction of seniors living, including self-contained dwellings and a new residential care facility on a neighbouring lot on land at Lot 100 DP 1114910 and Lot 7 DP 807906 199 and 207 Forest Way, Belrose for the following reasons:

1. Pursuant to Section 4.15 (1) (a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(3) (b) of *Warringah Local Environment Plan 2000* (as amended), the proposed modification is inconsistent with the Desired Future Character statement for the B2 Oxford Falls Valley Locality as it relates to the impact of the development on the Environmental Features and Ecological values of the site.

2. Pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000*, the development is inconsistent with the following General Principles of Development Control as follows:
- Clause 56 Retaining Unique Environmental Features
 - Clause 58 Protection of Existing Flora
 - Clause 60 Watercourses & Aquatic Habitats
 - Clause 76 Management of Stormwater