

26 September 2017
Ref: 5144

NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Anthony Witherdin - Director Modification Assessments

Dear Anthony,

Re: Response to Draft Conditions - Modification MP 08_0167 MOD 3 at Belle O'Connor St, South West Rocks

Thank you for your email of 20 September 2017 with draft conditions and final comments from Council regarding Modification MP 08_0167 MOD 3 at Belle O'Connor St, South West Rocks.

We have reviewed both documents and provide comments below.

It is noted that Council has not raised any issues which preclude approval of the modification and appear to be referring to the original application rather than the revisions which were undertaken to address their issues previously raised in the earlier consultation periods. This is frustrating as it appears to be a delaying tactic by Council as they have been consulted on numerous occasions, both formally and informally, and their issues addressed and resolved each time.

As such, it is our view that this is the final response which once again demonstrates resolution of Council's issues and that no further consultation is necessary with Council and determination of the modification by way of issuing of the modified consent can be achieved.

It is acknowledged that the Department of Planning is being thorough in their assessment however the continual identification of issues by Council already resolved is a waste of time and money for our client and has not resulted in a benefit for the community or resulted in an improved overall development on the site.

Should you have any issues which you feel have not been resolved, we can discuss immediately without the need to consult Council and we are happy to travel to meet with you face to face to achieve a resolution.

Our client has held off lodgement of an appeal to the Land and Environment Court as we have been liaising with the Department of Planning on a regular basis since lodgement of the application in December 2016 and resolving all identified issues in a timely manner to avoid delays. We seek your assistance to finalise the modification consent given there are no outstanding issues.



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Council Response:

- Current approval = 273 residential lots + 1 medium density residue lot.

It is proposed to substitute a Seniors Living development with 234 199 dwelling sites, a clubhouse, amenities building, pool, tennis court, bowling green and caravan storage area and workshop.

The result is a nett increase of 77 dwelling sites giving a new total of 350 dwelling sites.

This is an increase in overall density of 28%.

Within the Seniors Living area the increase is from 126 dwellings to 199 dwellings, an increase in density of 58%.

Comment:

The approved (as modified) development is for 273 residential lots plus a medium density lot.

This modification results in 147 standard residential lots, plus 1 seniors living lot (containing 199 dwelling sites) and 1 medium density lot.

The seniors living sites are not individual lots (all contained in one lot) and future dwellings for seniors housing are two bedrooms. The dwelling sites are not subdivided lots.

Considering the approved number of standard allotments as 4 bedrooms, a population of approx. 1092 is envisaged (excluding the medium density lot to the west), whereas the reduced number of standard lots as 4 bedrooms and the proposed 2 bedroom senior's lots, a population of 986 is expected. Having regard to these figures, the population in fact reduced over the entire site.

Further, findings from the 2016 PwC/Property Council Retirement Census states with respect to seniors living: *"60 per cent of units are occupied by single residents with 40 per cent occupied by couples"*. So, it can reasonably be expected that 60% of the proposed seniors living dwellings only contain one occupant, which significantly reduces density and traffic generation from anticipated.

Based on the RMS Guide to Traffic Generating Development, a standard residential block has an average daily vehicle trip of 9 per dwelling, whereas seniors housing has an average daily vehicle trip of 1-2 per dwelling. This does not take into consideration the bus proposed as part of the overall seniors living development which would reduce the dependency on private travel, as well as the proposed pedestrian network and linkages.

Overall, whilst the number of dwellings (not lots) in the eastern portion is increased, they are restricted to two bedrooms and the number of traffic movements will be reduced as a whole for the eastern portion of the site from 1125 trips to 398 trips.

As such, the density increase suggested by Council is unsubstantiated.

- Is this proposal substantially the same as the approved development given the significant increase in residential density and the new additional development (eg clubhouse, amenities building, etc)?

Comment:



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The lodgement of the application as a S.75W Modification was based on advice from the Department of Planning. Section 75W of the Environmental Planning & Assessment Act does not contain the requirement for the development to be substantially the same, as would occur for a modification of an application under S.96.

• The clubhouse is in Stage 5 by which time Stages 1 to 4 will have created 98 dwelling sites. No timeframe has been given for the completion of the various stages but, if the services/amenities are integral to the development, shouldn't the clubhouse be part of an earlier stage or at least when a threshold number of residents is achieved?

The earlier staging of the clubhouse and amenities is noted.

Comment:

No comment necessary, issue resolved.

• The clubhouse concept plan shows a café, large main dining area (144 seats), theatre, computer/library, medical/doctor area, bar and games room. However, there is no discussion in the SEE of exactly what facilities/services are to be provided nor how, when and at what cost nor to whom.

In relation to the clubhouse, amenities and recreational facilities, will these be available only to the Seniors Living residents or to the wider community?

In relation to the proposed bar, is it intended to seek a liquor licence and will this be open to the wider community?

Comment:

The senior's living development is in one ownership and the facilities will be provided and maintained by the owner at their expense. This is common practice for seniors living developments. The development is entirely private, with no SL roads, parks or facilities owned or managed by Council. The site has an on-site management team, supported by representatives of the residents.

The facilities will be available for use by the residents and their guests.

The proposed bar is a meeting area and it is unlikely that a liquor licence will be obtained. If in the future this is something that the residents wish to pursue, the process to obtain a liquor licence can be initiated at that time.

• Council maintains its concern about the water quality assessment for this proposal, and in particular about the extensive use of stormwater treatment swales relative to the seasonal high water table and the following effects:

- Water treatment being significantly reduced during the wetter periods experienced over the summer months;
- Water laying in the swales unable to drain over extended periods creating breeding grounds for mosquitoes and associated health issues particularly for seniors living.

Any inter-site pipe drainage is to be located within a private easement and vested in the affected owner and not Council.

Comment:



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Conditions of consent remain in place regarding water quality management. The stormwater disposal is consistent with the original approval and modification which was Peer Reviewed and found to be satisfactory. The design is in accordance with the Music Modelling Guidelines.

As the senior's living development lot is a private development in one ownership, there can be no requirement for an easement.

• The proposal represents a much higher density of development than previously approved (ie 85.7% 58% increase) which means a higher proportion of impervious area which in turn has implications for stormwater disposal and water quality management.

Council is not satisfied that, as stated on page 29, the previous assessment relating to the residential subdivision remains valid.

Revised MUSIC Modelling is required.

Comment:

As mentioned above, the population over the whole site in fact reduced as a result of the proposed development. Further, the seniors living component has a substantial increase in the area of green space and the overall development has a significant reduction in imperious area. As such, revised MUSIC modelling is not warranted.

• Compliance with BASIX would be required at CC stage for dwellings and similarly for the BCA Section J assessment for the clubhouse.

Noted in draft conditions.

Comment:

No comment necessary, issue resolved and conditions proposed.

• The proposal is to have 234 199 dwelling sites, various amenities and services as well as infrastructure (eg roads, drainage, water quality measures) on a single lot but no information has been given on how this is to operate – who/what body will be responsible for this estate, what are the financial arrangements (eg are sites leased, who owns the dwellings, how is the maintenance of the infrastructure to be addressed, and as above what services and costs apply to the various facilities – is it an annual charge?).

It is considered that the application to modify the consent should at least include some sort of draft Management Statement setting out roles and responsibilities for a development of this scale and nature.

Council considers that this information should be provided as part of the modification application, and not left as a condition of approval (ie E12). The Seniors Living Development is to occur on a single lot and no subdivision of it is proposed. Therefore condition E12, which refers to the issue of a Subdivision Certificate, would appear to be irrelevant.

Comment:

As is the case for most senior's living developments, the overall site remains in one ownership, including the communal facilities. In this instance, the overall lot remains in private ownership and people rent a dwelling site and purchase a dwelling to be located on that site. They are responsible for paying their own water and electricity for their dwelling.



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The operational details will be determined and a Site Management Plan prepared prior to occupation of the first dwelling. The financial details and exact details are not necessary information for Council when considering the planning requirements of the relevant legislation.

Accordingly, the condition for a Site Management Plan to be in place prior to the occupation certificate is appropriate.

- A Restriction As To User must be imposed on the title of the land as a condition as required by clause 18 of the SEPP.

Noted in draft conditions.

Comment:

No comment necessary, issue resolved and conditions proposed.

- A private bus service is to be provided. Will this be a timetabled service or on demand, will there be a defined route, will it pick up from individual residences, what provision be made for patrons with a disability, and what will be the cost?

This is an appropriate matter to be included in the Management Statement.

As provided in clause 26 of the SEPP, this matter of access requires written evidence support it prior to the issue of development consent, and this apparently has not been provided in any detail. Further, in order to satisfy this requirement, the bus service will need to be in place with the first dwelling.

What provision will there be for emergency transport?

This relates to the Management Statement described above.

Comment:

The proposal satisfies Clause 26 and the bus will operate in excess of the minimum times per day stated in that clause. This will be determined in the preparation of the Site Management Plan and is likely to evolve as more people are living within the development. Accordingly, the condition for a Site Management Plan to be in place prior to the occupation certificate is appropriate.

With respect to emergency services, the development is no different to any other senior's living development or normal housing estate and relies on the local emergency services. This development is not a high care facility.

- Detailed engineering plans will be required at CC stage to demonstrate compliance with gradient requirements.

Noted in draft conditions, but see comments there.

Comment:

The site is essentially flat and the gradient of the private SL roads and pathways within the site can easily meet the requirements.



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• Clause 28 of the SEPP requires written evidence to be provided prior to the issue of development consent in respect of water and sewer provision but this has not happened. The SEE relies on the work done for the currently approved residential subdivision as being adequate but has not given details of what investigations/enquiries have been made about what servicing capacity is available given the increased density of residential development of 39.56% - from 273 potential dwellings to 381 potential dwellings + the clubhouse and the associated amenities and recreation facilities. The responsibility for these investigations rests with the applicant.

Council is the water and sewer authority however no enquiries have been made of Council of the servicing capacity for the overall Seniors Living Development in the light of the increase in density of residential accommodation in this part of Saltwater and the clubhouse and amenities.

What written evidence has the Department relied upon?

Comment:

The client has undertaken discussions with Council regarding sewer and water. Council has provided information regarding their future sewer and water strategies and confirmed that there is ample capacity to accommodate the development and future development elsewhere. Attached is a copy of the email correspondence which clearly shows servicing capability for the Seniors Living Site and numerous other future development sites.

As indicated earlier, the assumptions regarding a density increase on the site are incorrect.

• It would appear that the site analysis submitted with the SEE does not satisfy the requirements of clause 30(3) and (4) of the SEPP – it doesn't address all of the specified matters.

SEPP (Seniors) clause 30(2) is very specific about the information that must be included in a site analysis.

Comment:

Attached is a Site Analysis Plan, in accordance with the SEPP. The Statement of Environmental Effects already addressed Division 2 – Clauses 33 to 39.

• The proposed overall staging plan shows that the whole of the seniors living development is Stage 1B to follow Stage 1A of 16 residential lots. This would result in Belle O'Connor Street being the only vehicular access for 250 lots 215 which is only marginally less than the existing approval for the 273 lot subdivision. Given that there would then be a further 131 lots to be created it is considered that this extends the overall development substantially beyond the previous Traffic Impact Assessment and therefore a further Assessment is required.

It would appear that no further Traffic Assessment has been required.

The Traffic Impact Assessments that have been undertaken for the total Saltwater Release Area, of which this development forms part, support the need for a north/south Link Road connecting Belle O'Connor Street with Phillip Drive in the north. Council is currently in discussions with landowners in the northern half of Saltwater with the aim of securing the corridor in that part of the Precinct.

The currently proposed staging of this development would result in a significant delay in the creation of the north/south link.

Therefore, one of the following alternatives is required:



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1. The staging of the Seniors Living is revised so that only Stages 1 and 2 of it are developed initially as Stage 1B and these are followed by Stages 1C and 2 of the residential subdivision. This would then create the necessary southern portion of the Link Road and the remaining Stages 3 to 12 could proceed.
2. As part of Stage 1A of the residential subdivision, which is currently underway, the Link Road corridor in Stages 1C and 2 is either transferred to Council or otherwise reserved in some fashion to ensure that this section of the Link Road can be constructed when required.

Comment:

Stages 1A and 1B are proposed to occur separately but concurrently. Given the size of Stage 1B, it is likely that it will continue for many years and Stages 1C and subsequent SL stages would occur whilst the internal staging of 1B continues.

The statement by Council in the first paragraph is incorrect with respect to density and timing. Stage 1A has 16 residential lots and Stage SL1 of the Seniors Living has only 25 dwelling sites, being a total of 41 initial dwellings. Following this, Stage 1C and Stage SL2 of the Seniors Living will commence bringing around 12 residential lots and 20 dwelling sites, to be a total of 73 dwellings. Then Stage 2 will commence and Stage SL3 of the Seniors Living, bringing 25 residential lots and 21 dwelling sites, to be a total of 119 dwellings. At this point the north-south road access is accessible if required.

Council cannot dictate the timing of the road construction, which is subject to many factors which affect timing including commercial viability of the project. This road will be built in accordance with the current consent, which showed it being completed in Stage 2. Alternatively, Council could compulsorily acquire the land. Refer also to comments under draft conditions.

Given the reduction in density of the development on the site due to the nature altering to seniors living, the traffic generation reduces significantly on the site. Based on the RMS Guide to Traffic Generating Development, a standard residential block has an average daily vehicle trip of 9 per dwelling, whereas seniors housing has an average daily vehicle trip of 1-2 per dwelling. This does not take into consideration the bus proposed as part of the overall seniors living development which would reduce the dependency on private travel, as well as the proposed pedestrian network and linkages.

Overall, whilst the number of dwellings (not lots) in the eastern portion is increased, they are restricted to two bedrooms and the number of traffic movements will be reduced as a whole for the eastern portion of the site from 1125 trips to 398 trips.

As such, a revised Traffic Assessment is not warranted and would be a waste of time and money given the reduced traffic generation from the revised proposal to include seniors living.

- The modification for the proposed Seniors Living development does not include any subdivision to create individual lots for dwellings, the clubhouse or any of the other amenities.

It is therefore considered that the proposal fits within the meaning of "in-fill self-care housing" which is described in clause 13 of the EPP as "seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care".

Clause 31 of the SEPP then requires the provisions of the Department's "Seniors Living Policy: Urban Design Guideline for Infill Development" to be considered but there has been no discussion of this in the SEE. The SEE should therefore be amended to include this.



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Comment:

Clause 31 was addressed in the amended SEE previously provided.

- The NSW Police Service should be requested to undertake a “*Safer By Design*” assessment with a copy of any recommendations forwarded to Council so that these may be considered in Council’s formulation of suggested conditions.

Comment:

The SEE discusses crime prevention and the Department of Planning determined that referral to the NSW Police was not warranted. There is no legislative requirement for referral.

- As no subdivision is proposed it is assumed that all of the infrastructure within the Seniors Living estate (ie roads, drainage systems, water quality measures, water and sewer reticulation and open space) is to remain in private ownership.

Confirmation that this is the case is required.

This is related to the Management Statement described above.

Comment:

It is confirmed that the seniors living development remains in one ownership.

- The existing development adjoining on the east is consistent with the R5 – Large Lot Residential Zoning and the land adjoining on the south is similarly zoned.

The combination of tree and vegetation planting within the Burrawong Drive road reserve and in a deep soil zone at the rear of the Seniors Living sites that back onto that road and at the rear of the sites on the eastern boundary can serve to act as a buffer between the very low density of residential development on one side and the much higher density of the Seniors Living development on the other.

The submitted landscape plan should be amended to reserve the rear of these sites (equivalent to 15% of site area) as Deep Soil Zone with recommended species appropriate to this buffer.

Given that most of the sites within this transition area are proposed to be in the latter stages of the development (ie Stages 10, 11 and 12) the planting within the Deep Soil Zones and Burrawong Drive road reserve should be undertaken as part of the earlier Seniors Living Stage 2 to give the opportunity for a mature buffer to already exist when the higher density of development occurs.

The sites proposed within this transition are typically in the lower area range (ie<250m²). The effectiveness of this transition would be improved if sites in the 300+m² were placed here, with the smaller sites clustered in the central and northern parts of the site.

Comment:

Council incorrectly ascertains that there is an increase in density on the site.



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The landscape design of the site includes a buffer along the full length of Burrawong Drive, outside of the dwelling sites to screen the seniors living sites from the public road and nearby low density. To the east, Council appears to be reviewing the original plan rather than the amended plan which removed the row of dwellings along this boundary and replaced it with a wide open space / landscaped area. Further, this development is low scale and the dwellings single storey, which in conjunction with the proposed landscaping and fencing provide adequate screening. Deep soil zones are not necessary or a requirement of the legislation.

- A Restriction As To User will be required for the on-going maintenance of this perimeter Deep Soil Zone and the responsibility for this should be included in the Management Statement previously discussed. A Restriction As To User for the internal sites would be impractical but the responsibility should also be included in the Management Statement with reference to the individual site plans.

Comment:

A restriction-as-to-user is not possible with the development all in one ownership.

- The proposed dwelling sites would range from 215m² to 425m² and not all of the building designs (which range from 112.2m² to 127.5m²) would be available on all of the sites.

Comment:

The dwellings are not part of the proposal and Council appears to be commenting on the original submission.

- Given the density of development proposed it is considered that indicative shadow diagrams should be provided for the worst case scenario (ie the largest house design on the smallest site on which it would fit for 3 such consecutive sites, and for a north/south and an east/west orientation).

Comment:

The likely built form was indicated in the original submission and is single storey with two bedrooms. It is not common practice for single storey dwellings to provide shadow diagrams. At the time of lodgement of an application for a dwelling on each site, it can be determined if there are solar access issues when the exact built form will be known and the characteristics of the specific site.

- While the SEE is accurate in that the sites range in area from 215m² to 425m² it does not paint a true picture of the density of development proposed.

There is only 1 site with an area greater than 400m² and it occurs in Stage 12. A total of 159 sites are in the range 200m² to 250m² and this represents 68% of the residential sites.

The following table gives a much clearer representation of the development.



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	LOT SIZE				
	201m ² to 250m ²	251m ² to 300m ²	301m ² to 350m ²	351m ² to 400m ²	401m ² to 450m ²
Stage 1	17	3	3	2	
Stage 2	10	10	2	1	
Stage 3	23	2			
Stage 4	23	2			
Stage 5	9	2	1		
Stage 6	8	4	5		
Stage 7	8	7	2		
Stage 8	7	6	2		
Stage 9	9	3	2	1	
Stage 10	23	3			
Stage 11	9	4			
Stage 12	13	4	2	1	1
TOTAL	159	50	19	5	1
% OF TOTAL	67.90%	21.40%	8.10%	2.10%	0.50%

This is considered to be an over development within the Seniors Living area.

Comment:

Seniors living developments come in a variety of shapes and sizes. The requirements in Schedule 3 of the SEPP dictate the requirements with respect to compliance with Australian Standards and the like, however there is no minimum dwelling size or site area. It is a different form of housing and not directly comparable to a standard residential lot.

This development has been designed to provide a variety of site sizes and are capable of accommodating a good sized two bedroom free standing dwelling. This is far more generous than the standard form of seniors living which usually includes residential flat buildings or townhouses, often with little private open space or separation to adjacent residents. Council appears to be confusing the dwelling sites with individual residential lots and they are not directly comparable. The ownership of the development within one entity reflects the seniors living nature of the development as opposed to a standard residential subdivision.

The large amount of green space and linkages throughout the seniors living development further refutes the assertion of overdevelopment.

As indicated earlier, findings from the 2016 PwC/Property Council Retirement Census states with respect to seniors living: "60 per cent of units are occupied by single residents with 40 per cent occupied by couples". So, it can reasonably be expected that 60% of the proposed seniors living dwellings only contain one occupant.

Therefore, the assertion that the proposal is an overdevelopment in the seniors living area is inaccurate.

- Other than a brief mention in the SEE and its location shown on the plans, there is no meaningful information about the caravan storage area and workshop.

How many caravans are to be stored?

Is this area for use by residents only?

What is the purpose of the workshop, who will operate it and how?



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These are matters that should be included in the previously mentioned Management Statement.

Comment:

As indicated earlier, it is the case for most senior's living developments and is proposed in this instance that the overall site remains in one ownership, including the communal facilities. All amenities, including the workshop and caravan storage area is available for the residents to use.

The caravan storage area can accommodate the resident's caravan whilst they are at home and not away on a trip. This area is not habitable.

The workshop is a facility for the residents who wish to use to make something, and is commonly referred to as a men's shed. Once again, this is not a habitable area.

• The SEE states that the area of the Central Park has been reduced from the previously approved 4,470m² to 2,230m² (although the overall staging plan shows it to be 2,630m²). This loss is to be compensated for by increasing open space in the western portion (the residential subdivision portion??) to 36,355m².

However, the overall staging plan does not show such a substantial area of open space, nor is it identified on the Seniors Living staging plan.

Therefore, further information is required about the location of this open space, whether it is all usable as open space (ie it is also not used for another purpose such as a drainage reserve), whether it is intended to be dedicated to Council, and if so the timeframe for this.

It should be noted that Council would not wish to receive a maintenance burden ahead of a significant level of residential development (by way of actual dwellings) being achieved.

Partially addressed in draft conditions – see comments there.

Comment:

The landscape plan for the seniors living development clearly shows the large areas of open space. The open space was further increased as a result of the loss of sites along the eastern boundary. A series of pathways are proposed throughout the open space to provide walking links for the residents. All landscaping and open space in the seniors living portion remains in private ownership.

• A Restriction As To User will be required setting a minimum floor area for flood affected areas. **Check with Tony** about the 1% AEP flood level + 700mm?? freeboard.

Comment:

The flooding impacts of the site were considered as part of the original Part 3A application to determine if the site was suitable for residential development, with the flood planning level for future residential areas set and remain unchanged. We would accept the imposition of a condition requiring the floor levels of any future dwellings within the seniors living portion to be in line with the Pat 3A determination flood levels.

• Section 94 contributions are calculated at 1.7 EP per two bedroom unit. Although they cover a variety of services, the total contributions are calculated at \$5,464 per EP.

Total s94 contributions per unit = \$5,464 x 1.7 EP = \$9,288.80



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Total s64 contributions for development = \$9,288.80 per unit x 234 units = **\$2,173,579.20**

- Section 64 contributions for water and sewer are calculated at 0.6 ET per two bedroom unit for water, and 0.75 ET per two bedroom unit for sewer.

Water = \$9,570 per ET x 0.6 ET per unit = \$5,742.00 per unit for water

Sewer = \$8,073 per ET x 0.75 ET per unit = \$6,054.75 per unit for sewer

Total s64 contributions per unit = \$5,742.00 + \$6,054.75 = \$11,796.75

Total s64 contributions for development = \$11,796.75 per unit x 234 units = **\$2,760,439.50**

- **Amended s94 contributions and s64 charges have been included in the draft conditions of consent.**

Comment:

Refer to comments under draft conditions.

- There are a number of quality control issues with the information, including:

- o The SEE states the development is to occur in 13 stages (page 4) which is as shown on Figure 5 in the SEE (page 5). However, the separate plans downloaded from the Department's web site shows only 12 stages.
- o In the summary of the proposed development (page 6) there is no mention of the caravan storage area and workshop.
- o The last paragraph in Section A7 on page 13 of the SEE is incomplete and it is therefore unknown what is specifically being requested.
- o The zoning of the land is stated variously as being R3 (page 22) and R2 (page 32). The zoning is part R1 and part E2.
- o The SEE states the area of the Central Park to be 2,230m² while the staging plan shows it to be 2,630m².

Comment:

There issues were rectified in the updated submissions to Council.

With respect to the draft conditions of consent, below is a comment regarding the suggested changes.



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SCHEDULE 1

Development Approval: MP 08_0167 granted by the Planning Assessment Commission on 3 June 2011

For the following: Saltwater Residential Subdivision involving:

- 269 low density residential lots constructed throughout eleven stages of development
- one medium density residue lot
- internal public road network
- public open space areas with recreation facilities
- a network of pedestrian and cyclist pathways
- a 14.9ha conservation zone
- two stormwater treatment areas
- on-site landscaping works.

Proponent: Land Dynamics Australia

Approval Authority: Minister for Planning

The Land: Lot 1 DP 1128633; Lot 2 DP 1128633; and Lot 84 DP 792945, Belle O'Connor Street, South West Rocks

Comment:

The legal address of the site has been amended since the date of issue of the original Part 3A consent. The development subject of the Part 3A is now known as:

Lot 84 DP792945
Lot 1 DP 1229162
Lot 2 DP 1229162
Lot 36 DP 1214499

Modification: MP 08_0167 MOD 3: the modification includes:

- change of use of the eastern portion of the site from residential to seniors living development (SLD), including:
 - amendment to the size, location and layout of lots
 - provision of 199 SLD sites
 - amended road layout, vehicle entry and provision of private internal roads within the SLD
 - construction of SLD amenities including clubhouse, swimming pool, amenities block, bowling green, tennis court and workshop/shed
 - amendments to landscaping including pathways, open space, stormwater drainage, landscaping, services / utilities
 - stage the SLD over 12 stages
- reduction of 122 residential lots (excluding the medium density lot) from 273 to 147 lots
- amended road and lot layout adjacent to the SLD
- relocation and reduction in the size of the public park
- amend the overall staging of the development
- stratum lot boundary adjustment.

Comment:

The boundary adjustment is not a stratum.



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SCHEDULE 2

The above approval (MP 08_0167) is modified as follows:

- (a) Schedule 2 Part A – Administrative Conditions, Condition A1 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

A1 Project Description

Project approval is granted only to carrying out the project generally described below:

- 1) Subdivision of land into
 - a) **274 152 residential** lots, including **up to 273 151** low density residential lots and 1 medium density residential lot; **and**
 - b) **199 Senior Living Development sites and associated amenities comprised of a clubhouse, pool, amenities block, tennis courts and bowling green.**
- 2) Extension of the Belle O'Connor Street road reserve and construction of the internal **public** road network (consisting of Roads 1 to **14 7 in the residential subdivision, and an internal private road network consisting of Roads 1 to 7 in the Seniors Living Development;**
- 3) Creation of a **4,470 2,360m²** neighbourhood park with children's playground;
- 4) Creation of a 1,450m² bushland exercise park with picnic and barbeque facilities;
- 6) Creation of six stormwater treatment swales;
- 7) A network of pedestrian and cyclist pathways;
- 8) On-site landscaping works; and
- 9) Works to connect to reticulated services, including water, sewerage and telecommunications.

Comment:

1 b) should reference the shed/workshop, to be consistent with the description of the modification above.

2 should reference the seniors living staging as SL1 to SL 7 to reflect the updated staging plan attached. No changes were made to the staging, just the name of the staging to avoid confusion with the overall staging.



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- (b) Schedule 2 Part A – Administrative Conditions, Condition A2 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

A2 Project in Accordance with Plans

The project is to be undertaken generally in accordance with the following drawings

Design Drawings prepared by AECOM Australia Pty Ltd			
Name of Plan			Date
Malbec/Saltwater Development – South West Rocks – Bushfire Constraints Plan			03 August 2010
Engineering Drawings prepared by AECOM Australia Pty Ltd			
Name of Plan			Date
Belle O'Connor Street – South West Rocks – Site Analysis			02 March 2010
Malbec/Saltwater Development – South West Rocks – Road Sections			02 March 2010
Landscape Drawings prepared by AECOM Australia Pty Ltd			
Name of Plan			Date
Malbec/Saltwater Development – South West Rocks – Landscaping Plan			03 August 2010
Survey Drawings prepared by AECOM Australia Pty Ltd			
Name of Plan			Date
Belle O'Connor Street – South West Rocks – Site Analysis			02 March 2010
Design Drawings prepared by Land Dynamics Australia (08-0167-MOD-1)			
Name of Plan	Job No.	Issue	Date
Coast Subdivision Plan	4972_N_SHT 02	E	26.06.2013
Coast Staging Plan	4972_N_SHT-01	E	26.06.2013
Coast APZ Plan	4972	A	26.06.2013
Revised Overall Subdivision Plan		G	15.06.2017
Revised Overall Staging Plan		F	15.12.2016
Overall Masterplan		C	10.04.2017
Staging Plan		C	10.04.2017
Overall Landscape Plan		C	10.04.2017
Landscape Plan for Main Recreational Areas		C	10.04.2017
Clubhouse Floor Plan Sheet 1 of 4		D	12.12.16
Clubhouse Floor Plan Sheet 2 of 4		D	12.12.16
Clubhouse Floor Plan Sheet 3 of 4		D	12.12.16
Clubhouse Floor Plan Sheet 4 of 4		D	12.12.16
Boundary Adjustment Concept Plan		A	7.2.2017

Comment:

The following changes to the plan revision numbers and dates are required, noting that the staging and roads for the seniors living component now have the prefix SL:

Revised Overall Subdivision Plan	Issue I	12/9/17
Revised Overall Staging Plan	Issue G	26/9/17
Overall Masterplan	Issue E	26/9/17
Staging Plan	Issue D	25/9/17
Overall Landscape Plan	Issue D	26/9/17
Landscape Plan for Main Recreational Areas	Issue D	26/9/17

The Clubhouse plans and boundary adjustment plan remains as per the draft condition.

The following additional plans were provided and should be included:

Amenities – Floor Plan – 4 of 5	Issue B	24/11/16
Amenities 3D Plan – 5 of 5	Issue B	24/11/16



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- (c) Schedule 2 Part A – Administrative Conditions is amended by the insertion of the following new Condition A2A

Prior to the issue of a Subdivision Certificate, the following plans shall be amended/updated to take account of the approved modifications granted under Section 75W application (MP08 0167 MOD 3) and shall be submitted to for the Secretary's approval:

- a) **Malbec/Saltwater Development – South West Rocks – Bushfire Constraints Plan**
- b) **Malbec/Saltwater Development – South West Rocks – Landscaping Plan**
- c) **Coast Subdivision Plan 4972 N_SHT 02 Rev E**
- d) **Coast APZ Plan 4972 Rev I.**

Comment:

Noted.

- (d) Schedule 2 Part A – Administrative Conditions, Condition A3 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

A3 Project in Accordance with Documents

The project is to be undertaken generally in accordance with the following documents:

- (1) *Environmental Assessment* prepared by EDAW on behalf of Malbec South West Rocks Pty Ltd, dated 21 August 2009; and
- (2) *Preferred Project Report* prepared by AECOM Australia Pty Ltd on behalf of Malbec South West Rocks Pty Ltd, dated 5 August 2010.
- (3) *Section 75W Application to Part 3A Approval 08_0167, Saltwater Estate South West Rocks* prepared by Land Dynamics Australia on behalf of Malbec Properties Pty Ltd, dated 18 February 2013; and supplementary information supporting the modification request prepared by GHD Pty Ltd, dated 14 May 2013.

- (4) **Section 75W Application (MP08 0167 MOD 3) including Statement of Environmental Effects Section 75W Application to Part 3A Approval 08_0167 prepared by Land Dynamics Australia, dated December 2016, as updated by Revision A dated April 2017 and Revision B dated June 2017.**

Comment:

Noted.

- (e) Schedule 2 Part A – Administrative Conditions, Condition A5 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

A5 Limits on release of lots pending new road connection

- (1) **A Construction Certificate for subdivision works may only be issued for the first 48 lots/sites (within Stages 1A and 2 1B). Construction Certificates for Stage 3 (and beyond) remaining lots/sites/stages may be issued once the Burrawong Drive extension to Road No.14 is constructed.**
- (2) Notwithstanding (1), if further traffic analysis demonstrates to the satisfaction of the Council that the intersection of Belle O'Connor Street and Road No.14 is operating at an acceptable level of service and safety, the Council may allow the release of



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further Construction Certificates beyond the first 48 lots, even though the future road network extension has not yet been constructed.

- (3) The Proponent is required to close access to the site from Road No. 14 where it connects to the Belle O'Connor Street roundabout following construction of Council's preferred access route. The preferred route will connect to Road No. 14 via an extension of Burrawong Drive. A cul-de-sac is to be created at the western end of Road No. 14 where it connects to Belle O'Connor Street, with all access to and from the site provided via a new intersection at Burrawong Drive and Road No. 14. Note: The proposed layout of the new road connection has been generally outlined in Council's draft Saltwater Development Control Plan.
- (4) The full length of the road corridor of Roads 2 and 3 in the residential subdivision, as shown on Saltwater Links Revised Overall Subdivision Plan dated 12 September 2017 must be identified in the application for the Subdivision Certificate for Stage 1A of that subdivision.

The part of the road corridor that is not intended to be dedicated at Stage 1A must be identified as a separate lot.

A Restriction As To User must be imposed on the title of that lot preventing its use for any purpose other than as a road and any ancillary of incidental works such as drainage. Council must be noted as the authority able to vary or modify this restriction.

Comment:

Point 4 is irrelevant to this modification application and was already dealt with as part of the Part 3A consent. The road is approved and shown on the approved plans and timing indicated within the staging plan. This additional requirement is not considered necessary and services no benefit. There is no change as part of this modification which necessitates any change to the timing of the north-south road.

Further, the timing is dictated by separate commercial arrangements by the developer and any earlier acquisition should be dealt with separately by Council in the appropriate manner rather than through the imposition of the proposed condition.

- (f) Schedule 2 Part A – Administrative Conditions, Condition A7 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

A7 Staging

Stages 1A, 1B, **1C**, 2 and 3 must be carried out first, in accordance with the **Coast Staging Plan (Job No. 4972_N_SHT_01_Issue E) Saltwater Links Residential Subdivision Revised Overall Staging Plan (Revision F)** prepared by Land Dynamics Australia and dated **26.06.2013 15.12.2016**. The order of subsequent stages may be varied, subject to the proponent having received written approval by the **Director-General Secretary**.

The Senior Living Development (Stage 1B) shall be carried out in accordance with the Saltwater Links Seniors Living Residential Development Staging Plan (Revision C) prepared by Land Dynamics Australia and dated 10.04.2017.

Comment:

Stages 1A and 1B are proposed to occur separately but concurrently. Given the size of Stage 1B, it is likely that it will continue for many years and Stages 1C and subsequent stages would occur whilst the internal staging of 1B continues.

The following changes to the plan revision numbers and dates are required:



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Revised Overall Staging Plan	Issue G	26/9/17
Staging Plan	Issue D	25/9/17

- (g) Schedule 2 Part A – Administrative Conditions is amended by the insertion of the following new Condition A8

A8 Senior Living Development

This consent does not approve dwellings within the Seniors Living Development. Separate development application(s) must be lodged and consent obtained from Council. Any future application(s) for dwellings shall be accompanied by BASIX certification at the time of lodgement.

A development application must be lodged, addressing the matters in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, for each dwelling.

Comment:

Noted.

- (h) Schedule 2 Part B – Prior to Issue of Construction Certificate, Condition B1 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

B1 Acid Sulfate Soil Management Plan

A detailed Acid Sulfate Soil Management Plan for the entire site shall be prepared by a suitably qualified person in accordance with the *Acid Sulfate Soil Assessment Guidelines* (Acid Sulfate Soil Management Advisory Committee, 1998); Council's DCP No.30 – *Exempt and Complying Development*; and, having regard to the *Acid Sulfate Soils Assessment* prepared by Martens Consulting Engineers dated June 2010. The Management Plan shall cover the entire site **and include a Dewatering Management Plan and a Groundwater Monitoring and Contingency Program to ensure disturbance of Acid Sulfate soils can be appropriately managed. The management plan shall and be prepared in consultation with the Department of Primary Industries (DPI) Water and** submitted to the satisfaction of Council prior to the issue of a Construction Certificate for Stage 1.

Comment:

This condition has already been satisfied with a construction certificate issued for Stage 1 of the approved residential area. Therefore, changes are irrelevant.

- (i) Schedule 2 Part B – Prior to Issue of Construction Certificate, Condition B6 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

B6 Stormwater Treatment Swales

- (j) The site is to include vegetated bio-retention swales for the two main swales running south to north and for the whole periphery of the north eastern boundary with the conservation zone (excluding the conservation zone). Swales are to be designed so that 100% of the total developed site's three month runoff drains through them. Road side swales are to have a minimum width off 2.5m and sized for hydraulic conveyance of design flows **and shall include the vegetative structures approved in MOD 1 which includes macrophytes and broad leaved native plants.** Swales are to be provided as road side swales only and all interallotment drains are to be piped.

Comment:



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Noted.

- (k) Schedule 2 Part B – Prior to Issue of Construction Certificate, Condition B8 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

B8 Stormwater and Drainage Works Design

Final design plans of the stormwater drainage systems within the site, prepared by a qualified practicing Civil Engineer and in accordance with the requirements of Council **and DPI Water**, shall be submitted to and approved by the Certifying Authority prior to issue of a Construction Certificate. The hydrology and hydraulic calculations shall be based on models described in the current edition of *Australian Rainfall and Runoff*.

Note: Should detailed design considerations result in a change to the adopted water quality solution shown on the subdivision plans, remodelling using MUSIC, with parameters as adopted in the *Amended Water Cycle Management Plan* prepared by Martens Consulting Engineers and dated July 2010 (provided with the PPR), shall be required in order to verify the adequacy of redesigned components. Any further modelling shall demonstrate that post-development mean load pollutants (Total Suspended Solids, Total Nitrogen and Total Phosphorus) to the downslope vegetation from the site and upslope catchments post development, do not exceed pre-development loads. A modification to this approval will be required should any components of the stormwater and drainage works design differ from the requirements as outlined in Conditions B6 **and B7**.

Comment:

Noted.

- (l) Schedule 2 Part B – Prior to Issue of Construction Certificate, Condition B12 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

B12 Water Quality Management and Monitoring

The Proponent is to prepare a Water Quality **Management and Monitoring** Program. This Program is to be prepared by a suitably qualified person(s) **in consultation with DPI Water** and is to be submitted to and approved by Council prior to the issue of the first Construction Certificate. The Program is to include, but not be limited to:

- (1) details of a baseline study to establish the pre-development water quality which includes weekly monitoring for four consecutive weeks and measuring the parameters identified below. The average value of each parameter is to be taken as the benchmark of the pre-development water quality;
- (2) locations at which **ground and surface** monitoring will be undertaken;
- (3) identification of the parameters/ pollutants to be monitored at each location, including, but not limited to pH, temperature, dissolved oxygen, total nitrogen and turbidity **and metal contaminants associated with discharges from Acid Sulfate soils (including aluminium, copper and iron)**; procedures and protocols for the sampling and analysis methodology to be undertaken;
- (4) a program for the periodic monitoring of the parameters/ pollutants at each of the monitoring locations. As a minimum, monitoring must occur **during construction and** quarterly throughout the life of the project; and,
- (5) details of water quality limits that would indicate the project is having a detrimental effect on the water quality and a contingency plan in the event that the water quality is diminished.
- (6) **be integrated with the Acid Sulphate Soils Management Plan required under Condition B1.**

Comment:



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This condition has already been satisfied with a construction certificate issued for Stage 1 of the approved residential area. Therefore, changes are irrelevant.

- (m) Schedule 2 Part B – Prior to Issue of Construction Certificate, Condition B16 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

B16 Groundwater Monitoring

The Proponent is to prepare a Groundwater Monitoring and Contingency Program to monitor and assess the impact of the project on the quality of the groundwater. This Program is to be prepared in consultation with the **NSW Office of DPI** Water and is to be submitted to and approved by Council prior to the issue of a Construction Certificate.

Comment:

Noted.

- (n) Schedule 2 Part B – Prior to Issue of Construction Certificate, Condition B17 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

B17 Asset Protection Zones

Asset Protection Zones (APZs) are to be provided in accordance with *Bushfire Hazard Assessment – Proposed Subdivision – Lots 1 & 2 DP 1128633 & Lot 84 DP 792945 Belle O'Connor Street, South West Rocks* prepared by Midcoast Building and Environmental, dated November 2012 **as may be amended by the approved amended/updated plans (condition A2A)**. Details of the APZs (as it relates to each stage of the project) are to be provided to the satisfaction of the Certifying Authority prior to the release of the Construction Certificate for each stage of the project.

Comment:

Noted.



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- (o) Schedule 2 Part B – Prior to Issue of Construction Certificate is amended by the insertion of the following new Condition B18

B18 Senior Living Development – Rural Fire Service Conditions

Asset Protection Zones

- 1) At the commencement of construction and in perpetuity the entire site shall be managed as an inner protection area as outlined within section 4.1.3 and Appendix 5 of the 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service document 'Standards for asset protection zones'.
- 2) A Bush Fire Management Plan is to be prepared for the open space areas and asset protection zones shown on the plan titled *Overall Masterplan* prepared by Land Dynamics Australia (Ref: 5144, Issue C, dated 10.04.2017). The Plan shall be prepared prior to the issue of an Occupation Certificate for any dwelling in Stage 1 and a copy provided to the Department and Council. The Plan shall address the following requirements:
 - a) contact person; and
 - b) schedule and description of works for the construction of asset projection zones and their continued maintenance.
- 3) A restriction to land use pursuant to section 88B of the 'Conveyancing Act 1919' shall be placed on the following areas of Lot 2 SP 1220275 (as amended) for the purpose of a temporary asset protection zone:
 - a) for a distance of 22 metres to the west of Lots 11, 12, 35-38 and 81-86;
and
 - b) for a distance of 50 metres to the north-west of Lot 88.

The APZ shall be managed as an inner protection area as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'. The restriction to land use for the purpose of a temporary asset protection zone may be extinguished upon commencement of future development over the affected areas.

- 4) The full width of Burrawong Drive along the southern perimeter of the development shall be managed as an inner protection area as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

- 5) Water, electricity and gas are to comply with the section 4.1.3(1) of 'Planning for Bush Fire Protection 2006'.

Access

- 6) Internal roads shall comply with the section 4.1.3(1) of 'Planning for Bush Fire Protection 2006'.
- 7) Traffic management devices, including the site entry gates onto Burrawong Drive and the security gate along the path in the north-west corner of the development are to facilitate access by emergency service vehicles.
- 8) The second entry / exit onto Burrawong Drive and the completion of Road 1 shall be constructed as part of Stage 5.
- 9) The path between the north-west corner of the site and Road 2 shall be constructed in accordance with section 4.1.3(3) of 'Planning for Bush Fire



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Protection 2006' and shall connect with the approved fire trail immediately to the west.

Evacuation and Emergency Management

- 10) Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006', including the preparation of an emergency / evacuation plan consistent with the NSW RFS document titled 'A guide to development a bush fire emergency management and evacuation plan'. A copy of the plan shall be provided to the Department, Council and the local Bush Fire Management Committee prior to issuing and Occupation Certificate for any dwelling in Stage 1 of the development. A copy of the plan is to be provided to the residents of each dwelling at the commencement of occupation.

Design and Construction

- 11) Construction on the following lots shall comply with Sections 3 and 5 (BAL 12.5) of Australian Standard AS 3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection':

Stage 1 – Lots 9 to 14;
Stage 2 – Lots 27 to 40 and Club House;
Stage 3 – Lots 54 to 66;
Stage 4 – Lots 67 to 88;
Stage 5 – Lots 89 to 100;
Stage 6 – Lots 101 to 107;
Stage 7 – Lots 118 to 132 and 170;
Stage 9 – Lots 151 to 153;
Stage 10 – Lots 171 to 183
Stage 11 – Lots 184 192
Stage 12 – Lots 193 to 199

- 12) Roofing of buildings outlined in condition B18(11) shall be gutterless or guttering and valleys are to be screened to prevent the build-up of flammable material. Any materials used shall be non-combustible.
- 13) Fencing shall comply with the NSW RFS Community Resilience Fact Sheet 2/06 'Dividing Fences' which states that where timber fence does not connect to a dwelling and has a minimum 1 metre separation from the dwelling then a fence may be constructed from hardwood, or non-combustible material. Where a fence connects directly to or has less than 1 metre separation from a dwelling it shall be constructed from non-combustible materials only.

Landscaping

- 14) Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Comment:

With respect to Point 2 and 11, it should refer to Stage SL1 to SL12 to avoid confusion.

- b) Schedule 2 Part B – Prior to Issue of Construction Certificate is amended by the insertion of the following new Condition B20

B20 Access/Parking

The car parking areas and internal access roads are to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Full details are to be included in documentation for a Construction Certificate application.

Comment:

Noted.



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- c) Schedule 2 Part B – Prior to Issue of Construction Certificate is amended by the insertion of the following new Condition B21

B21 Swimming Pools

The swimming pool and child-resistance barrier(s) shall comply with the design and construction requirements of Part 2 of the Swimming Pool Act 1992, Australian Standard 1926.1-2007: "Swimming Pool Safety - Safety Barriers" (AS) and Council's Swimming Pool Guidelines booklet. Any exemption certificate required under the provisions of Section 22 of the Act shall be issued by Council. Should the barrier incorporate a glazed fence or balustrade, that part of the barrier shall also comply with the relevant design requirements of Appendix E of the AS and Australian Standard 1288 – "Glass in Buildings".

Comment:

Noted.

- d) Schedule 2 Part B – Prior to Issue of Construction Certificate is amended by the insertion of the following new Condition B22

B22 Food Preparation

Plans and specifications submitted for issue of a Construction Certificate shall demonstrate compliance with the requirements of:

- Food Act 2003 and Regulations there under.
- Australian Standard 4674-2004 Design, construction and fit-out of food premises.

Comment:

Noted.

- e) Schedule 2 Part B – Prior to Issue of Construction Certificate is amended by the insertion of the following new Condition B23

Plans shall be submitted to the certifying authority showing foot path paving to be constructed as follows:

Street Name	Side	Paving Width	Length
All streets	One side	1.2m (concrete edge of the carriageway)	Full length

Comment:

A series of pedestrian pathways will be provided throughout the green linkages throughout the entire seniors living development. Further, the seniors living site is in private ownership and all SL roads are privately owned. It is not proposed to provide a separate footpath on the streets, which is common approach for seniors living developments. Given the nature of the development, traffic movements are low and the SL road is an appropriate gradient to have a dual use to assist with residents getting to the pedestrian linkages.

- f) Schedule 2 Part B – Prior to Issue of Construction Certificate is amended by the insertion of the following new Condition B24

B24 Waste Storage

Any waste storage facility is to be screened from the street. Full details are to be included in the documentation for a Construction Certificate application.

Comment:

Noted.



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- g) Schedule 2 Part D – Prior to During Construction is amended by the insertion of the following new Condition D13

D13 Building Code of Australia Compliance

All building work shall be carried out in accordance with the provisions of the Building Code of Australia.

Comment:

Noted.

- h) Schedule 2 Part D – Prior to During Construction is amended by the insertion of the following new Condition D14

D14 Surveys

The building(s) shall be set out by a registered surveyor and a survey report lodged with the Principal Certifying Authority to verify the approved position of each structure in relation to the property boundaries.

Comment:

Noted.

- i) Schedule 2 Part D – Prior to During Construction is amended by the insertion of the following new Condition D15

D15 Swimming Pools

- a) **Any child-resistant barrier required by the Swimming Pool Act 1992 shall be erected prior to filling, or allowing the pool to fill, with water to a depth exceeding 300mm.**
- b) **A poster (warning notice) prepared by the Royal Life Saving Society shall be exhibited in a prominent position adjacent the pool area. The poster shall contain the wording referred to in Part 3 of the Swimming Pools Regulation 2008, including a flow sequence containing details of resuscitation techniques (for infants, children and adults).**
- c) **The filtration motor is not permitted to operate between the hours of 8.00pm and 8.00am.**
- d) **The swimming pool filter and pump shall be fully enclosed in a purpose built acoustic enclosure to attenuate noise emitted by the swimming pool equipment. The acoustic enclosure shall reduce the sound pressure level of the swimming pool filter and pump equipment to a level not greater than 5dB (A) above the background noise level in accordance with Protection of the Environmental Operations Act 1997.**
- e) **The discharge and/or overflow pipe from the swimming pool and filtration unit shall be connected to an approved sewerage system where available.**
- f) **All backwash water from the filtration unit shall be similarly disposed, or alternatively, shall be connected to an absorption trench having a minimum capacity of 1m³, having a maximum depth of 600mm and located a minimum 3m from any boundary and existing or proposed building (including impervious pavement) on the land.**

Comment:

Noted.



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- j) Schedule 2 Part D – During Construction is amended by the insertion of the following new Condition D16

D16 Food Preparation Area

The food preparation areas shall be constructed so as to comply with the requirements of:

- a) **The Food Act 2003 and Regulations there under.**
- b) **Australian Standard 4674-2004 Design, construction and fit-out of food premises.**
- c) **Australian Standard 1668.2-2002 The use of ventilation and air conditioning in buildings – Ventilation design for indoor air contaminant control.**

The walls and floor of the premises are to be constructed with an approved durable, smooth, impervious material capable of being easily cleaned.

Comment:

Noted.



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- k) Schedule 2 Part E – Prior to Issue of Subdivision Certificate, Condition E7 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

E5 Registration of Easements / Restriction to use / Right of carriageway

- 1) The creation of easements for services, rights of carriageway and restrictions as to user are applicable under Section 88B of the *Conveyancing Act 1919*, including (but not limited to) the following:
- Easements for sewer, water supply and drainage over all public services/infrastructure on private property.
 - Drainage Easements are to be placed over all subsurface drains and interallotment drainage, benefiting and burdening the property owners. Maintenance of the subsurface drains is to be included in the 88B instrument.
 - A Restriction as to User burdening all future lots: a minimum finished floor level of 4.1m AHD is to be achieved for all future habitable structures.

- d. A Restriction as to User allowing for the creation of a 20 metre wide Asset Protection Zone, measured from the boundary of the conservation zone shall burden the following **residential Lots and Stages**:

- **Lot 56 and Lot 57 the two lots immediately south of the 1,450 m² Bushland exercise park** (Stage 2);
- **Lots 216 – 221 inclusive the six northern lots** (Stage 9 4);
- **Lots 222 – 225 inclusive the four northern lots** (Stage 10 5); and
- **Lot 274 (the medium density lot)** (Stage 11 6).

This area shall be maintained as an inner protection area in accordance with *Planning for Bushfire Protection 2006* and the RFS's *Standards for Asset Protection Zones*. No dwellings are to be constructed in this area. The Restriction as to User shall advise the landowner of the need to maintain this area as an Asset Protection Zone.

- d1. A Restriction as to User allowing for the creation of a 15 metre wide Asset Protection Zone, measured from the boundary of the conservation zone shall burden the following **the two northern residential Lots within Stage 3**:

- **Lots 66 – 69 inclusive, and Lot 71 (Stage 3)**;
- **Lots 72 – 74 inclusive, and Lot 154 (Stage 4)**;
- **Lots 155 – 157 inclusive, Lot 181 and Lot 182 (Stage 5)**;
- **Lot 183, Lot 184, Lot 190, and Lot 213 (Stage 7)**; and
- **Lot 212 (Stage 8)**.

This area shall be maintained as an inner protection area in accordance with *Planning for Bushfire Protection 2006* and the RFS's *Standards for Asset Protection Zones*. No dwellings are to be constructed in this area. The Restriction as to User shall advise the landowner of the need to maintain this area as an Asset Protection Zone.

- e. **A Restriction as to User within Stage 8 of the subdivision, burdening Lots 202 – 204 inclusive allowing for the creation of a 10 metre wide Asset Protection Zone, measured from the southern site boundary. This area shall be maintained as an inner protection area in accordance with**

Planning for Bushfire Protection 2006 and the RFS's Standards for Asset Protection Zones. No dwellings are to be constructed in this area. The Restriction as to User shall advise the landowner of the need to maintain this area as an Asset Protection Zone.

- 2) Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council

Comment:

The first sentence should reference E5, not E7.



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- l) Schedule 2 Part E – Prior to Issue of Subdivision Certificate, Condition E7 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

E7 Dedication of Public Open Space

~~The Proponent must make necessary arrangements for the dedication of the public open space areas as shown on the plan prepared by Land Dynamics Australia (Job No. 4972 N SHT 02), titled Coast Subdivision Plan (dated 26.06.2013) Revised Overall Subdivision Plan, Issue No. G (dated 15.0.2017) to Council as follows:~~

- ~~1) With respect to the 1,450 m² bushland exercise park, prior to release of the Subdivision Certificate for Stage 2~~
- ~~2) With respect to the 4,470 2,360 m² central neighbourhood park, prior to the release of the Subdivision Certificate for Stage 3 2.~~
- 1) The need for the dedication of a neighbourhood park is to be negotiated with Council following the issue of a Construction Certificate for Stage 3 of the residential subdivision.
- 2) If the dedication of a neighbourhood park is required by Council, this is to occur no sooner than when the majority of the residential lots in Stages 1A, 1C and 2 (ie. Minimum 29 of 57 lots) have been developed by way of dwellings.
- 3) Council, at its discretion, may require the dedication of the bushland park or neighbourhood park at an earlier time.
- 4) If Council does not require the dedication of the neighbourhood park, the area of 2,360m² may be converted into 4 residential lots.

Comment:

Noted.

- m) Schedule 2 Part E – Prior to Issue of Subdivision Certificate, Condition E10 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the words/numbers as follows:

E10 Section 94 Monetary Contribution

Prior to the endorsement of a Subdivision Certificate for each stage of the project, the Proponent must pay, in proportion to the additional lots created by that stage, the following contributions to Council pursuant to Section 94 **and Section 64** of the Environmental Planning and Assessment Act (1979):

1) Amount of Contribution

Name of Contribution Plan	Number of ET	\$ per ET	Total
Community Services – Library	273	\$ 804	\$ 219,492.00
Community Services – MPB	273	\$ 986.40	\$ 269,287.20
Open Space Acquisitions	273	\$ 960	\$ 262,080.00
Open Space Increased Capacity	273	\$ 3,100.80	\$ 846,518.40



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Bushland	273	\$ 67.20	\$ -18,345.60
Traffic and Transport Management	273	\$ 2,918.40	\$ 796,723.20
Public Domain Improvements	273	\$ 412.80	\$ 112,694.40
Stormwater Management	273	\$ 2,803.20	\$ 765,273.60
Support Services - Bushfire	273	\$ 79.20	\$ 21,621.60
Support Services - Surf Lifesaving	273	\$ 96	\$ 26,208.00
Plan Studies	273	\$ 163.20	\$ 44,553.60
Kempsey Public Domain	273	\$ 1,060	\$ 289,380.00
Total		\$ 13,451.20	\$ 3,672,177.60
Section 94 Contribution Plan - Project Administration		6% x \$ 3,672,177.60	\$ 220,330.66
Grand Total	273	\$ 14,258.27	\$ 3,892,508.26

Section 94 Contributions

Name of Contribution Plan	For each residential lot	x 147 Lots (subject to Condition E7)	For each seniors site	x 199 Sites
Community Services - Library	\$871.20	\$128,066.40	\$617.10	\$122,802.90
Community Services - MPB	\$1,068.00	\$156,996.00	\$756.50	\$150,543.50
Open Space Acquisitions	\$1,041.60	\$153,115.20	\$737.80	\$146,822.20
Open Space Increased Capacity	\$3,360.00	\$493,920.00	\$2,380.00	\$473,620.00
Bushland	\$74.40	\$10,936.80	\$52.70	\$10,487.30
Traffic and Transport Management	\$3,163.20	\$464,990.40	\$2,240.60	\$445,879.40
Public Domain Improvements	\$448.80	\$65,973.60	\$317.90	\$63,262.10
Stormwater Management	\$3,038.40	\$446,644.80	\$2,152.20	\$428,287.80
Support Services - Bushfire	\$84.00	\$12,348.00	\$59.50	\$11,840.50
Support Services - Surf Lifesaving	\$103.20	\$15,170.40	\$73.10	\$14,546.90
Plan Studies	\$177.60	\$26,107.20	\$125.80	\$25,034.20
Kempsey Public Domain	\$1,101.60	\$161,935.20	\$780.30	\$155,279.70
Total	\$14,532.00	\$2,136,204.00	\$10,293.50	\$2,048,406.50
Section 94 Contribution Plan - Project Administration (+6%)	\$871.92	\$128,172.24	\$617.61	\$122,904.39
Grand Total	\$15,403.92	\$2,264,376.24	\$10,911.11	\$2,171,310.89

Total s94 Contributions = \$4,435,687.13

2) Timing and Method of Payment

The contribution shall be paid in the form of cash or bank cheque, made out to Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Council. Evidence of the payment to Council, shall be submitted to the Certifying Authority prior to the issue of the Subdivision Certificate for each stage of the project.

The contributions are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment. The contribution rates for specific dates are available from Council.

3) Section 94 Plans

A copy of the Section 94 contribution plans may be inspected at Kempsey Shire Council Chambers – 22 Tozer Street, West Kempsey.



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- n) Schedule 2 Part E – Prior to Issue of Subdivision Certificate is amended by the insertion of the following new Condition E11

4) Certificate of Compliance

- a) Prior to the issue of any Construction Certificate, a Certificate of Compliance pursuant of Section 305 of the Water Management Act 2000 shall be obtained from Council and provided to the Principal Certifying Authority.
- b) A Certificate of Compliance shall be issued by Council when all contributions are paid in full and all infrastructure necessary to service the development has been completed in full to the satisfaction of Council
- c) Contributions set out in the following table are to be paid to Council prior to the issue of any Certificate of Compliance. Contributions are levied in accordance with Council's Kempsey Shire Council Macleay Water DSP for Water dated July 2006.
- d) The contributions payable will be adjusted in accordance with the relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.
- e) Section 64 Contributions

	<u>WATER (per lot)</u>	<u>x 148 Lots (subject to Condition E7)</u>	<u>SEWER (Per lot)</u>	<u>x 168 Lots</u>
<u>Each Residential Lot</u>	<u>\$9,800.00</u>	<u>\$1,440,600.00</u>	<u>\$8,267.00</u>	<u>\$1,215,249.00</u>
	<u>WATER (per site)</u>	<u>x 199 Sites</u>	<u>SEWER (per site)</u>	<u>x 199 Sites</u>
<u>Each Seniors Site</u>	<u>\$5,880.00</u>	<u>\$1,170,120.00</u>	<u>\$6,200.25</u>	<u>\$1,233,849.75</u>
	<u>WATER (per ET)</u>	<u>x 10.53ET</u>	<u>SEWER (per ET)</u>	<u>x 14.39ET</u>
<u>Clubhouse</u>	<u>\$9,800.00</u>	<u>\$103,194.00</u>	<u>\$8,267.00</u>	<u>\$118,962.13</u>

Total s64 Charges = \$5,281,974.88

Comment:

The original consent only levied s.94 contributions. It is expected that these would be revised regarding the breakdown and increased with CPI. However, the imposition of s.64 contributions was not envisaged and has a significant financial impact beyond that expected under the current consent.

The seniors living development is not development of a new portion of the site which has not already been approved for residential development and this is not a new development application. As such, this modification does not generate s.64 contributions in its own right.

The consent authority does not have the freedom to simply re-write the consent when considering a modification to reflect an oversight. Having regard to the ability to impose contributions, it is understood that they can only be imposed on the grant of development consent. A modification is not development consent, but rather modification of an existing consent. Refusal of the modification is not warranted as the proposed modification would not materially increase the demand for public amenities and services beyond those envisaged in the original consent, as can be seen by the lower ET for the seniors living dwellings.

E11 Restriction of Use



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Prior to the issue of a Subdivision Certificate for the Senior Living Development approved pursuant to this approval, the Proponent must create a restriction as to the user under the Conveyancing Act 1919 restricting the occupation of each senior living dwelling in the subject development to:

- a) seniors or people who have a disability as defined by the provision of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;
- b) people who live within the same household with seniors or people who have a disability;
- c) staff employed to assist in the administration of and provision of services to housing provided in this development.

The instrument creating the restriction as to user, shall be prepared by the Proponent at its own expense and submitted duly executed by the Proponent or the owner of the property to the Department for approval by the Department's solicitors. The Proponent shall pay the cost of the instrument and proof of registration of the instrument upon the title to the subject property shall be provided to the Department by the Proponent prior to the occupation or issue of an Occupation Certificate in respect of the Senior Living Development.

Comment:

Noted.

- o) Schedule 2 Part E – Prior to Issue of Subdivision Certificate is amended by the insertion of the following new Condition E12

E12 Plan of Management (Senior Living Development)

Prior to the issue of a Construction Certificate relating to the Senior Living Development, a Plan of Management shall be submitted to the Council to promote safe and efficient operation of the proposed Senior Living Development. The Plan of Management shall include (but not be limited to) the following:

- a) consideration of roles/responsibilities;
- b) site maintenance;
- c) management of caravan storage;
- d) waste management;
- e) provision and operation of the private bus;
- f) management and use of the clubhouse and workshop/shed; and
- g) secure access to the site
- h) maintenance of infrastructure
- i) maintenance of stormwater swales.

Comment:

This condition is more appropriate for prior to Occupation Certificate – Part F.

In the second sentence, delete the words “Plan of Management”, and the following words should be inserted “a copy of the Site Management Plan”. Council has no role in the detail of the Site Management Plan.

- p) Schedule 2 Part E – Prior to Issue of Subdivision Certificate is amended by the insertion of the following new Condition E13

E13 Landscaping

All landscaping shall be completed in accordance with the approved landscaping design plan. All turfed areas shall be finished level with adjoining surfaces and graded to approved points of drainage discharge.

Comment:

Noted.



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- q) Schedule 2 is amended by the insertion of the following new Schedule 2 Part F– Prior to Issue of Occupation Certificate
- r) Schedule 2 Part F – Prior to Issue of Occupation Certificate is amended by the insertion of the following new Condition F1

F1 Fire Safety Certificate

An interim or final fire safety certificate complying with Clause 153 of the Environmental Planning and Assessment Regulation 2000 shall be issued prior to the use or change of use of the building, except in the case of any Class 1a and Class 10 building(s).

A final fire safety certificate complying with Clause 153 of the Environmental Planning and Assessment Regulation 2000 shall be issued prior to the use or change of use of the building, except in the case of any Class 1a and Class 10 building(s).

Comment:

Noted.

- s) Schedule 2 Part F – Prior to Issue of Occupation Certificate is amended by the insertion of the following new Condition F3

F3 Drainage Works

- a) A copy of the stormwater drainage design plans approved with the Construction Certificate with 'work as executed' levels indicated, shall be submitted to the Principal Certifying Authority and Council prior to the issue of an Occupation Certificate. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.
- b) The water management measures as indicated on the submitted plans and Stormwater Management Strategy and/or as modified under the terms of this consent are to be implemented and the nominated controls and appliances are to be installed and operational prior to issue of an Occupation Certificate.

Comment:

Noted.

- t) Schedule 2 Part F – Prior to Issue of Occupation Certificate is amended by the insertion of the following new Condition F4

F4 Lighting

Appropriate lighting is to be provided for the carparks and pedestrian pathways in accordance with AS 1158 – Lighting and AS 4282 – Control of Obtrusive Effects of Outdoor Lighting, such to be installed prior to occupation of the premises.

Comment:

Noted.



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- u) Schedule 2 is amended by the insertion of the following new Schedule 2 Part G – Post Occupation
- v) Schedule 2 Part G – Post Occupation is amended by the insertion of the following new Condition G1

G1 Food Premises

The food premises shall be maintained in accordance with the requirements of;
o Food Act 2003 and Regulations there under.

o Australian Standard 4674-2004 Design, construction and fit-out of food premises.

The proprietor is to ensure that all food handling complies with the requirements of the Food Act 2003 and Regulations there under.

Comment:

Noted.

- w) Schedule 2 Part G – Post Occupation is amended by the insertion of the following new Condition G2

G2 Protection of the Environment Operations Act 1997

Any activity carried out in accordance with this approval shall not give rise to air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997.

In accordance with the requirements of Part 5.7 Protection of the Environment Operations Act 1997, Council is to be informed of any pollution incident that occurs in the course of carrying out the approved activity where material harm to the environment is caused or threatened.

Comment:

Noted.

- x) Schedule 2 Part G – Post Occupation is amended by the insertion of the following new Condition G3

G3 Waste Management

All waste generated on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997.

All waste and recycling bins must be stored wholly within the approved waste storage area. The bins must only be put out for collection in the evening prior to pick-up and returned to the storage area as soon as possible after pick-up.

Comment:

Noted.



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- y) Schedule 2 Part G – Post Occupation is amended by the insertion of the following new Condition G4

G4 Clubhouse

The clubhouse shall not be utilised for any type of commercial activity other than uses associated with the private use of the facility by residents of the seniors living development. Any proposal to alter the use of the common room in this regard will require separate consideration and approval.

The clubhouse is approved for the following hours of operation:
7 am to 10 pm, 7 days a week

Any modifications to these hours requires the separate approval of Council.

Comment:

The hours of operation were not requested in order to allow flexibility for the residents in organizing their activities. The Clubhouse will not expected to be in use 24 hours a day, however the ability to have a nighttime function which extends beyond 10pm is likely to be required. The Clubhouse is located well away from adjoining residences and the noise levels are restricted by the Protection of the Environment Operations Act without the need for a restriction on hours of operation.

Further, the Clubhouse is for use by the residents and their invited guests, but not open to the general public.

- z) Schedule 2 Part G – Post Occupation is amended by the insertion of the following new Condition G5

G5 Parking

- a) All required off-street car parking spaces and internal roads shall be maintained to a standard suitable for the intended purpose.
- b) Access and parking for people with disabilities shall be maintained in accordance with provisions of Australian Standards 1428.1 and 2890.1.
- c) All off-street street visitor car parking spaces and internal roads shall be used for car parking only and not the long term placement of caravans, boats, trailers or the like.

Comment:

Noted.

- aa) Schedule 2 Part G – Post Occupation is amended by the insertion of the following new Condition G6

G6 Noise

The use and occupation of the premises, including all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the Protection of the Environment Operations Act 1997 (NSW).

Should Council consider offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic assessment prepared by a suitably qualified acoustical consultant recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant confirming the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council prior to the expiration of the nominated period.

Comment:



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Unnecessary condition as the noise levels of activities are governed by Condition G2 and the Protection of the Environment Operations Act. The second paragraph of this condition will unfairly expose the owner of the development to excessive costs relating to acoustic reports as the whim, of Council and should be deleted.

bb) Schedule 2 Part G – Post Occupation is amended by the insertion of the following new Condition G7

G7 Landscaping

All landscaped areas provided in accordance with the approved landscaping design plan shall be maintained at all times in a suitable manner.

Comment:

Noted.

cc) Schedule 2 Part G – Post Occupation is amended by the insertion of the following new Condition G8

G8 Loading

All loading and unloading operations shall take place at all times wholly within the confines of the land.

dd) Schedule 2 Part G – Post Occupation is amended by the insertion of the following new Condition G9

G9 Maintenance

The driveway crossing, parking areas and stormwater management system are to be properly maintained for the life of the development.

Comment:

Noted.

ee) Schedule 2 - Advisory Notes is amended by the insertion of the following new Advisory Note AN5

A liquor licence shall be obtained from the Office of Liquor, Gaming and Racing prior to the issue of an Occupation Certificate for the Clubhouse.

Comment:

The words “if required” should be added after “liquor licence” as it is unlikely that a liquor licence will be sought for the Clubhouse. The bar area is intended as a meeting area for residents and as the stages of the development progress, an application for a licence can be made at that time should the residents consider it necessary.

We welcome the opportunity to discuss should there be any questions and we request a final review of the conditions prior to issue of the consent.

We have also attached a complete set of the plans as per Condition A2, noting we have added SL in front of the staging and road names for the seniors living component to avoid confusion.



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Yours faithfully

Graham Burns
Director - Land Dynamics Pty Ltd

- A. Set of Final Plans for Approval**
- B. Updated Site Analysis Plan – Rev B**
- C. Email of Minutes from meeting with KSC regarding sewer and water**