



**Planning &
Environment**

***MODIFICATION REQUEST:
Seniors Living Development
34-36 Memorial Avenue, Kellyville***

MP 09_0180 MOD 6

Modifications to Clusters 1 and 5



Secretary's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

April 2015

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1. BACKGROUND

The purpose of this report is to determine a request to modify the approved Project Application (MP09_0180) for the construction of a seniors living development at 34-36 Memorial Avenue, Kellyville, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification request seeks approval for reconfiguration of the buildings in Clusters 1 and 5 including increase in height, reconfigured footprints and layout, an increase in floor space and dwelling numbers, increase in onsite car parking and other associated changes.

1.1 Site Location

The site is located on the southern side of Memorial Avenue, approximately 40km northwest of the Sydney CBD and within the Hills Shire Council Local Government Area. The site locality is illustrated in **Figure 1**.

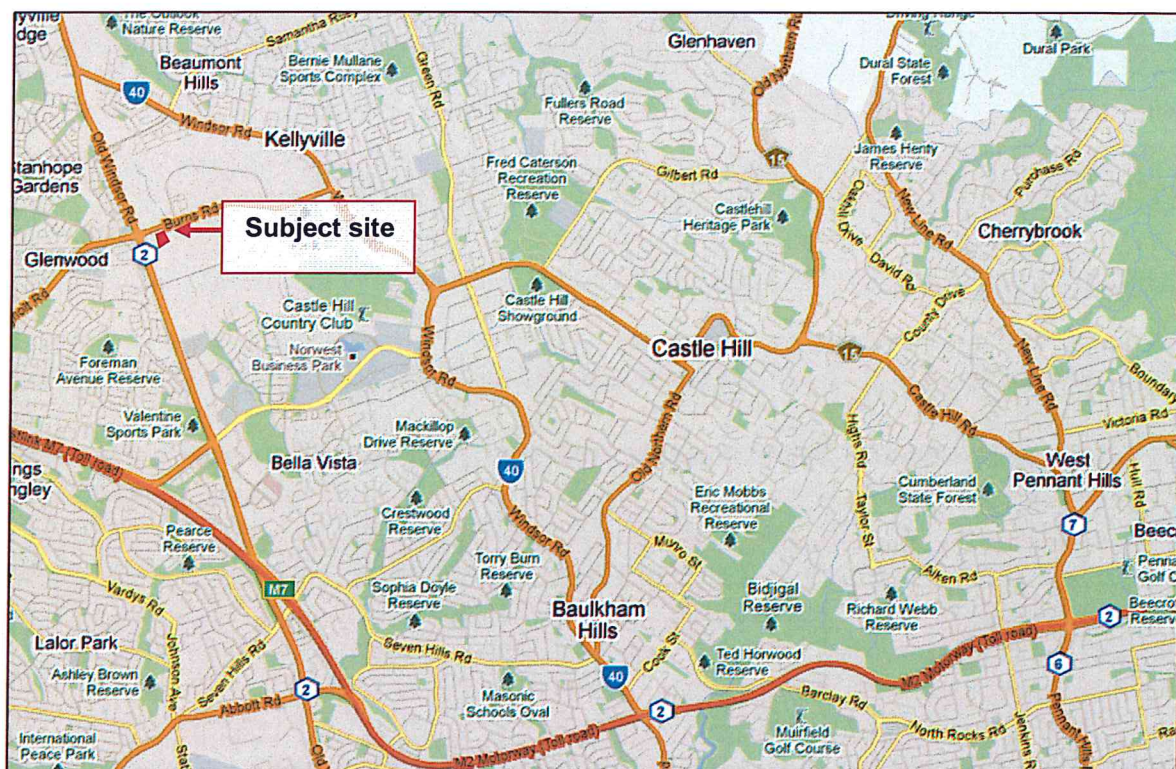


Figure 1: Project Location

The site and surrounding area falls within the Balmoral Road Release Area and was rezoned for residential uses in 2006.

The surrounding area is currently occupied by a mix of low density residential dwellings and rural properties. However this area is envisaged to transition to a medium to high density residential precinct in accordance with the *Hills Shire Local Environmental Plan 2012* (The Hills LEP).

1.2 Previous Approvals

On 16 February 2011, the Department approved a Major Project Application (MP 09_0180) for the construction of a seniors living development consisting of:

- a part 4 / part 5 residential aged care facility (RACF) building with 128 rooms (160 beds) providing resident and staff facilities;
- a Young Persons with a Disability Overnight Respite Building (YPDOR);
- 7 cluster buildings providing 231 self-contained dwellings;
- a day centre in cluster 7;
- a community centre in cluster 7;

- village club facilities in cluster 7;
- basement and at-grade parking for 203 cars; and
- landscaping including a managed open space park incorporating Cumberland Plain Woodland.

1.3 Previous Modifications

On 25 July 2011, the Department approved MP 09_0180 MOD 1 modifying Condition C2 'Signalisation Works to Memorial Avenue/ Arnold Avenue/ Free Settlers Drive'. The modification allowed the first stages of construction of the approved development to commence prior to (then) RTA approval of the intersection upgrade design for the Memorial Avenue/ Arnold Avenue/ Free Settlers Drive intersection.

On 4 September 2012, the Department approved MP 09_0180 MOD 2 modifying Condition E2 to be consistent with the related Development Application DA1662/2010/ZB approved by the Hills Shire Council for works to the Memorial Ave & Free Settlers Drive intersection.

On 13 November 2012, the Department approved MP 09_0180 MOD 3 modifying Conditions A1, A2 and Commitment No 26, all with respect to parking. The modification allowed for increased parking provision on the site (from 203 to 289 spaces) with some associated amendments to basement parking footprints and finished floor levels.

On 2 July 2014, the Department approved MP 09_0180 MOD 4 allowing the deletion of the YPDOR building and the reconfiguration of the RACF building with associated amendments to landscaping, parking layout, vehicle access, stormwater drainage and the Statement of Commitments.

On 30 October 2014, the Department approved MP 09_0180 MOD 5 modifying the RACF building, including consolidation of roof plant, modification to roof profile and building height, modification to loading dock, ground floor layout and footprint, and one additional parking space.

1.4 Existing Development on the Site

The proponent has commenced development on the site in accordance with the Project Approval. Intersection and road works around the site have been completed. Clusters 6 and 7 located in the south-west part of the site have also been completed and are occupied (refer **Figure 2**). Cluster 7 includes the village club and facilities for the site. The site is otherwise undeveloped. It includes an area of Cumberland Plain Woodland vegetation in central and south-eastern parts of the site.

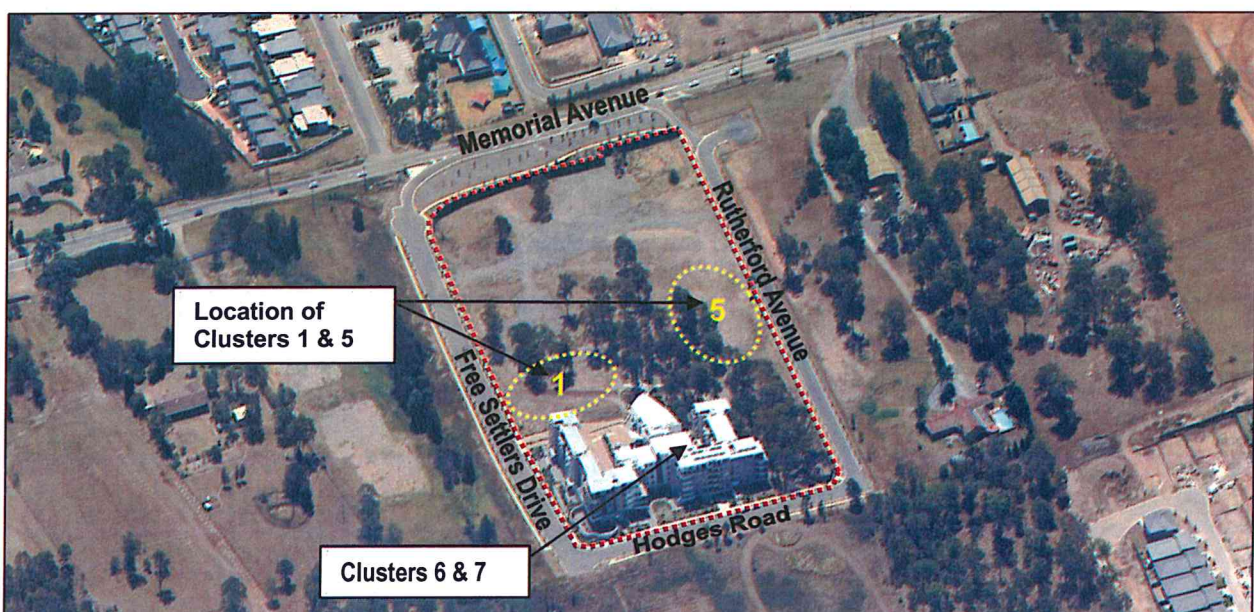


Figure 2: The Site

2. PROPOSED MODIFICATION

This modification application relates to Clusters 1 and 5 located in the central part of the site (refer to **Figure 2** above).

This modification application seeks approval for the following:

- reconfiguration of two buildings (Clusters 1 and 5) including increase in height from a 4 and a 4-5 storey building to two 5 storey buildings with reconfigured footprints and layout;
- an increase in floor space of 2,629m²;
- an increase in the number of independent living units (ILUs) of 13 units (from 231 to 244) and change to the proposed unit mix;
- increase in associated basement car parking by 27 spaces;
- associated amendments to landscaping; and
- minor amendments to the statement of commitments.

On 17 March 2015, as a result of more detailed design work, the proponent submitted revised plans that reduced the height and modified the building footprint of Cluster 5 as compared to the plans originally submitted notified as part of this modification request. The plans also included reconfiguration of the internal layout and balconies within the Cluster 5. No changes were made to Cluster 1.

The proposed modified layout is depicted in **Figure 3**.

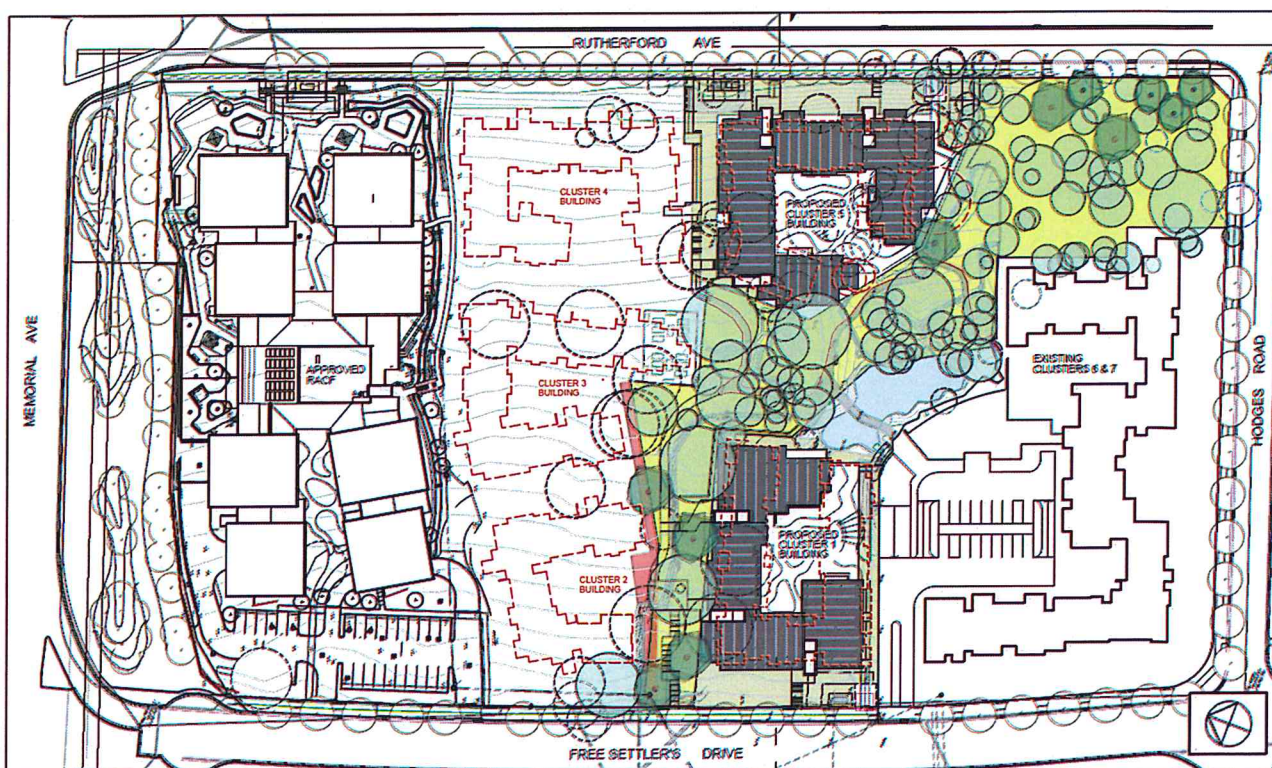


Figure 3: Proposed site layout

The proposed modification would require some changes to existing conditions on the approval:

- update to the description of the development in Condition A1,
- update to the plans and documents referred to in Condition A2;
- amendments to Condition B17, (which requires that all standard basement car parking spaces must be designed to enable future conversion to an accessible parking space) to exclude Clusters 1 and 5 as all parking within Clusters 1 and 5 are now designed to be accessible; and
- amendment to Condition F10 which also relates to accessible parking, to exclude Clusters 1 and 5.

Some minor amendments to the Statement of Commitments are also proposed including:

- amendment to Commitments 7 and 8 and a new commitment 9A relating to the preservation and restoration of the Cumberland Plain Woodland through a Landscape Restoration Management Plan and amendment of the Section 88B instrument in relation to the managed open space. The amendments are required as a result of the minor changes to the boundary of the area of protected CPW in conjunction with the revised footprints of Clusters 1 and 5; and
- amendment to Commitment 26 to update the number of proposed car parking spaces, including accessible car parking spaces.

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify the Project Approval

In accordance with clause 3 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or her delegate) may approve or disapprove the modification of the project under section 75W of the EP&A Act.

3.2 Modification of the Minister's Approval

Section 75W(2) of the EP&A Act provides that a proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval of a modification is not required if the project, as modified, would be consistent with the original approval. As the proposed modification seeks to alter the approved plans and conditions of the project approval, the modification requires the Minister's approval.

3.3 Environmental Assessment Requirements

Section 75W (3) of the Act provides that the Secretary may notify the Proponent of environmental assessment requirements with respect to the proposed modification that the Proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, it was not considered necessary to notify the Proponent of the environmental assessment requirements pursuant to Section 75W (3) with respect to the proposed modification, as sufficient information was provided to the Department to consider the application.

3.4 Delegated Authority

In accordance with the Minister's delegation of 16 February 2015, the Acting Director, Key Site Assessments can determine this modification request as

- the council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions objecting to the proposal.

4. CONSULTATION AND SUBMISSIONS

In accordance with Section 75X(2)(f) of the EP&A Act, the Secretary is required to make the modification request publicly available. The Department publically exhibited the application from Thursday 29 January 2015 until Monday 2 March 2015 (33 days) on the Department's website, at its Information Centre and at the offices of The Hills Shire Council. It advertised the public exhibition in the Sydney Morning Herald, the Daily Telegraph, and the Hills Shire Times on Wednesday 28 January. The application was also referred to relevant State and Local government authorities and adjoining residents and landowners were notified of the application by mail.

The EPA, Transport for NSW, and the Office of Environment and Heritage all responded, advising that they have no comments to make on the application.

The only other submission received was from The Hills Shire Council. Council advised that the development as modified would be a valuable community asset and that the proposed bulk, scale, and design is consistent with the envisaged character of the zone. Council raised no objections to the proposed modification but outlined two matters for further consideration, being:

- the depth of the proposed car parking spaces; and
- the need for a stormwater model.

These issues are addressed in this report.

5. ASSESSMENT

The key issues in the Department's assessment of the proposed modification are:

- density;
- design and visual appearance;
- traffic and parking;
- Cumberland Plain Woodland impacts;
- internal amenity; and
- stormwater management.

5.1 Density

The proposal seeks to increase the number of independent living units (ILUs) on the site from 231 to 244 units (an increase of 13 units). It also seeks to increase the gross floor area (GFA) on the site by 2,629m² to a total of 40,800m² which will equate to an floor space ratio (FSR) of 1.11:1. The proposed increase in ILU numbers are predominantly from additional three bedroom units with a minor increase in one bedroom units and decrease in two bedroom units (**Table 1**). The proponent notes this is in response to market demand for more three bedroom units in the seniors housing market.

Table 1: Dwelling mix for independent living units across the site

	Approved	Proposed
1 bedroom	29 (13%)	33 (14%)
2 bedroom	158 (68%)	152 (62%)
3 bedroom	44 (19%)	59 (24%)
Total	231	244

The proposal results in a modest increased density on the site, however it will also result in a lesser floor space than the originally approved development. The development as originally approved in 2011 had a total GFA of 41,471m² and FSR of 1.13:1. Modification 4 then deleted a respite facility for young persons and reduced the GFA to 38,171m² and FSR to 0.98:1. Overall floor space and building bulk across the site will therefore remain less than the development as originally approved.

The impacts of increased density relate to:

- visual impacts of additional building bulk and scale;
- amenity impacts arising from increased building scale (such as overshadowing and privacy);
- impacts to traffic movements; and
- adequacy of infrastructure provision.

Visual impacts, amenity, and traffic impacts are discussed in **Sections 5.2, 5.3 and 5.5** and it is found that no unacceptable impacts arise from the proposal.

In terms of infrastructure provision, the modest increase in the number of dwellings will not have a significant impact on the need for infrastructure and services in the area. Based on expected occupancy rates for this type of development, the applicant estimates the modified proposal will result a population of 526 persons across the site, being less than the population envisaged by the Hills Development Control Plan (549 to 641 persons for a site of this area) and therefore will not result in unexpected impacts to infrastructure demand.

Further, the development itself makes a positive contribution to the infrastructure and services in the area. It includes extensive open space areas on the site and provides an aged care service to the community and housing for the region's aging population. In conjunction with the project, the proponent has also constructed new roadways adjoining the site and dedicated them to Council and has carried out an intersection upgrade to the intersection of Memorial Avenue and Free Settlers Drive.

On this basis the proposed increase in density is supported.

5.2 Design and Visual Appearance

Cluster 1

Cluster 1 has a primary frontage to Free Settlers Drive and will be visible from adjoining sites to the west. As compared to the approved building, the modified building would:

- present as one storey taller at the northern end of the western elevation and minor changes to roof height elsewhere (refer **Figure 4**); and
- present as wider as viewed within the streetscape (36.7m as compared to 34.5m approved);
- retain the same (10m) setback from Free Settlers Drive to the main building line, but with some minor protrusions (balconies, entrance foyer and stairwell) into the setback.



Figure 4: Proposed streetscape (western) elevation of Cluster 1 to Free Settlers Drive with outline of approved building shown in red.

As with the approved building, the proposed modified building would slightly exceed the 16m height control under The Hills LEP. The proposal has an overall maximum height of 17.5m to the roof (including plant) and would present an eaves height of 16.2m to 16.8m to the street, but in the context of the approved building height, and the height of adjoining buildings (as seen in **Figure 4**), the modified building would not be excessive in height or scale.

Council has advised that the proposed scale of the buildings is consistent with the envisaged character of the zone.

At 36.7m, building length is also considered acceptable, and consistent with local planning controls. The Hills Shire Development Control Plan (DCP) allows for a maximum linear length of 50m for residential flat buildings.

The modified building would remain highly modulated, including a range of elements and finishes to provide visual interest and articulation to the streetscape to break up the length of the building (**Figure 5**). The minor encroachments of the balconies and stairwell into the street setback area provide additional articulation and visual interest to the building and will still enable significant setback plantings to ensure a landscaped appearance to the site.



Figure 5: Perspective view of proposed Cluster 1 building

Overall the modified design and façade treatments respond well to the residential nature of the site and the likely future character of the surrounding residential zone.

Cluster 5

Cluster 5 has a primary frontage to Rutherford Avenue and will be visible from properties to the east of the site. As compared to the approved building, the modified building would:

- present as taller (five storeys in height as compared to the approved building which presents as three storeys plus an additional fourth storey setback from the main building line);
- present as wider (49.7 metres wide as compared to 46.2 metres approved); and
- have an increased setback from Rutherford Avenue (main building line would set back 10.5m as compared to 9.5m approved), incorporating increased landscaping (a depth of 8m – 9m is proposed, compared to a depth of 6m - 7m as approved).

Due to the topography of the site, parts of the fifth storey of the building would exceed the 16 metre height control under the Hills LEP (up to 19m to the roof), however the building has a height of 16 metres to eaves on the Rutherford Avenue elevation and therefore would present as consistent with the height and scale of development envisaged by the local controls.

The modified building is also highly modulated, with a variety of elements and finishes to provide visual interest and articulation to the streetscape and other elevations (refer **Figure 6**). The increased depth of soft landscaped area to the front setback will also enable significant tree planting which will soften the visual impacts of the increased building height. Concept landscape plans submitted with the application denote extensive tree planting to the setback area.

As with Cluster 1, Council has advised that the proposed scale of the building is consistent with the envisaged character of the zone.

At 49.7 metres, the increased building length is also considered acceptable, consistent with local planning controls which allow for building lengths of up to 50 metres. Again, the modulation and variation of the façade assists in breaking up the length of the façade.



Figure 6: Perspective view of proposed Cluster 5 building

Despite the proposed changes and increase in building height, the buildings still retain a good level of building separation (discussed further in **Section 5.5**) to enable generous landscaped areas between buildings and throughout the site, and the proposal achieves a high level of amenity in terms of outlook, daylight access, landscaped green space, and privacy.

Given the highly modulated and articulated nature of the façade design, consistency with local height and building width controls, and increased setback landscaping, the visual impact of the development within the streetscape is considered acceptable.

5.3 Traffic and Parking

Traffic

The proponent submitted a traffic assessment with the modification request. The assessment advises that the proposed increase in dwellings would result in an additional 2 to 4 vehicle movements per hour in the morning and afternoon peaks, which would result in a negligible impact to the surrounding road network. The Department has reviewed this analysis and agrees that minimal adverse traffic impacts arise from the proposal.

Parking Provision

The proposal provides a more efficient design to the basement parking layouts in Clusters 1 and 5 which enable the provision of a total of 84 spaces within Clusters 1 and 5, resulting in a total of 317 spaces across the site (an increase of 27 spaces).

The proposed modification represents a modest increase in the rate of parking provided for ILUs across the site, from an average of 1 space per dwelling as currently approved, to a rate of 1.06 spaces per dwelling.

In support of the proposed increase, the proponent advises that the increased rate of parking is consistent with rates expected under *State Environmental Planning Policy (Housing for Seniors or People with a Disability)* 2004 (Seniors Housing SEPP) where the application is not made by a social housing provider.

The Department supports reduced car parking provision in highly accessible locations. However, since the original application was approved, the planned town centre and public transport interchange have been relocated from approximately 150m west of the site to over 1.5km from site. This relocation significantly alters the public transport options for residents, increasing reliance on private vehicle use.

Importantly, the proposed increase in car parking provision will not result in any disruptions to the functioning of nearby intersections. In addition, there will be no visual impacts resulting from the proposed increased parking, which will all be accommodated at basement level.

In conclusion, the Department considers that given the altered circumstances in terms of the accessibility of the site, the consistency of the proposed parking provision with the Housing for Seniors SEPP for non-community housing providers, the lack of negative impacts on the surrounding road network and the visual character of the area, the proposed increase in on-site parking provision is acceptable.

Accessible Parking

The revised basement layouts for Clusters 1 and 5 incorporate 84 (100%) accessible spaces with minimum dimensions of 3.2 metres by 5.5 metres. Of these, at least 11 spaces (13%) will have a minimum width of 3.8 metres. This complies with the requirements of the Seniors Housing SEPP which requires 5% of spaces be capable of being increased to 3.8m wide, with all spaces accessible as defined by AS2890.1 (3.2m wide).

Further, the proposed accessible parking provision exceeds the approval (MOD 3) which provided for 13 accessible spaces (13%) and 44 standard spaces (77%) in Clusters 1 and 5, subject to Condition B17 which requires that the standard spaces are to be capable of being converted to allow additional accessible parking in the future.

As the proposal seeks to provide 100% accessible spaces in Clusters 1 and 5, the Department supports the amendment of Condition B17 so that it does not apply to Clusters 1 and 5.

The proposed amendments are supported as they significantly improve the accessibility of parking.

5.4 Remnant Cumberland Plain Woodland

The existing cluster of trees in the central and south-east part of the site represents remnants of the Cumberland Plain Woodland (CPW), a Critically Endangered Ecological Community under the *Environment Protection Biodiversity Conservation Act* 1999. The approved Landscape Restoration Management Plan and conditions of approval require the provision of an Open Space Park

including the retention and revegetation of 0.56ha of CPW, with a restriction on its use established through a Section 88B instrument on the title of the site requiring its ongoing protection to the benefit of The Hills Shire Council.

The Section 88B Instrument has been registered. However, the proposed changes to the footprint of Cluster 5, including the access driveway, result in minor amendments to the area designated as retained CPW under the Landscape Restoration Management Plan. Further, four to five *Eucalyptus crebra* trees will need to be removed as a direct result of the proposed amendments. To offset these impacts, an additional 198m² of vegetated CPW is proposed to be provided along the northern edge of the Open Space Park to retain the minimum 0.56ha requirement. An additional 10 new *Eucalyptus crebra* trees are also proposed to be planted (**Figure 7**).

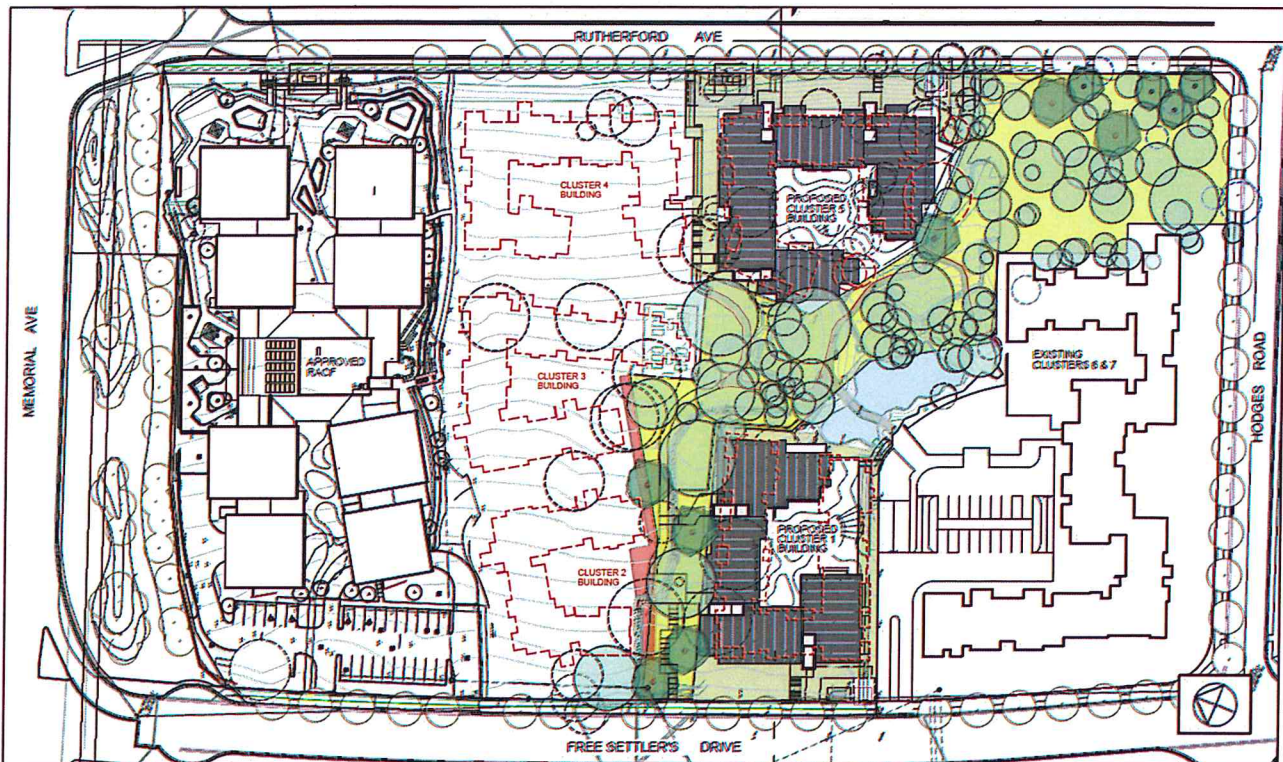


Figure 7: Proposed site plan (yellow area is existing CPW to be retained; red area is proposed additional CPW)

While the loss of CPW should be avoided, the proponent submitted advice from Travers Bushfire and Ecology which support the proposed amendment to the CPW conservation area and replacement of the four to five *Eucalyptus crebra* trees to be removed with 10 new *Eucalyptus crebra*. Travers conclude that this maintains the intent and conditions of the original approval.

The Department notes that the existing approval allows for approximately 70 out of 158 trees on the site to be removed and that the proposal was not a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999*. On this basis, the removal of an additional four to five trees is acceptable given the replacement with 10 trees of the same species and retention of 0.56ha of CPW conservation area, consistent with the original approval.

The application was referred to the Office of Environment and Heritage, who did not raise any concerns with the proposed modifications. The Hills Shire Council (who benefit from the Section 88B instrument) also raised no concerns with this aspect of the proposal.

Given that the proposal will ensure the required minimum area of CPW is retained, and will result in an increase in the number of trees provided in this area, the Department is satisfied that no unacceptable ecological impacts will arise from the proposal.

5.5 Amenity

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Residential Flat Design Code (RFDC), do not apply to the Seniors housing developments, however, as the development includes a large proportion of ILUs which are similar to residential apartments in their layout and use, the Department previously considered the proposal against the guidelines for residential development in the RFDC. The Department concluded that the development provided high levels of internal amenity, consistent with the RFDC design guidelines with the exception of some minor departures in relation to building separation and private open space for ground floor units.

The proposed modifications retain consistency with the RFDC guidelines and improve the amount of private open space at the ground floor level of Clusters 1 and 5, by converting smaller balconies to larger terrace spaces, resulting in improved amenity for these units.

In terms of building separation, the RFDC recommends a minimum building separation of 12 metres for buildings up to 4 storeys in height, and 18 metres separation for buildings of 5 storeys and above. The revised Cluster 1 and 5 buildings generally meet the RFDC guidelines, with the exception of two units on the fifth level of Cluster 1 (**Figure 8**) and reduced separation between Cluster 5 and Cluster 4 (**Figure 9**).

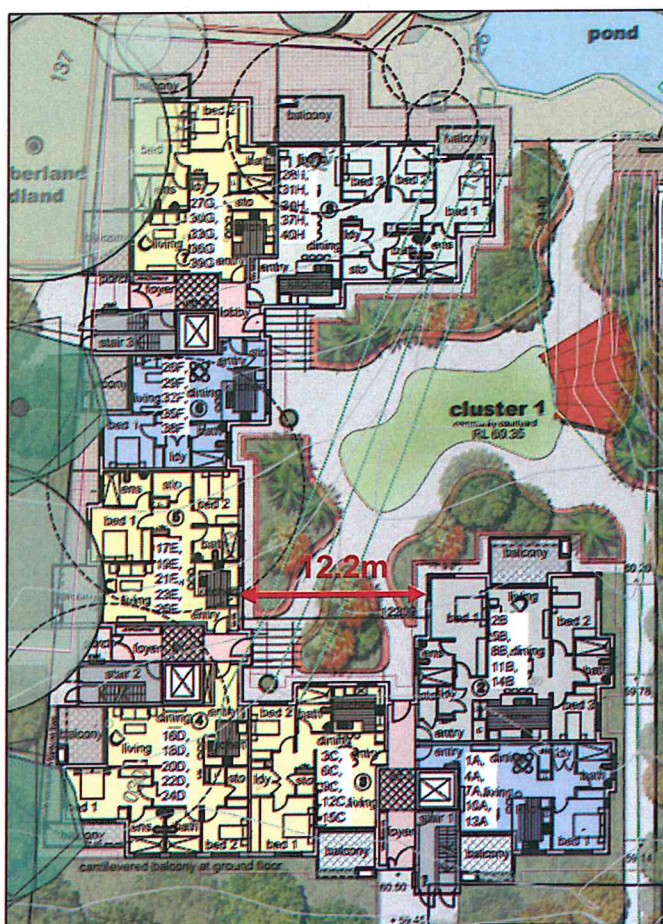


Figure 8: Typical Floor Plan for Cluster 1

In relation to Cluster 1, two units on the fifth level of the building would be separated from each other by 12.2 metres, less than the 18 metres recommended by the RFDC. However, the window orientation and internal layouts of the dwellings ensures that an acceptable level of privacy will be retained between the two units, which have their primary living areas and open space areas oriented away from each other.

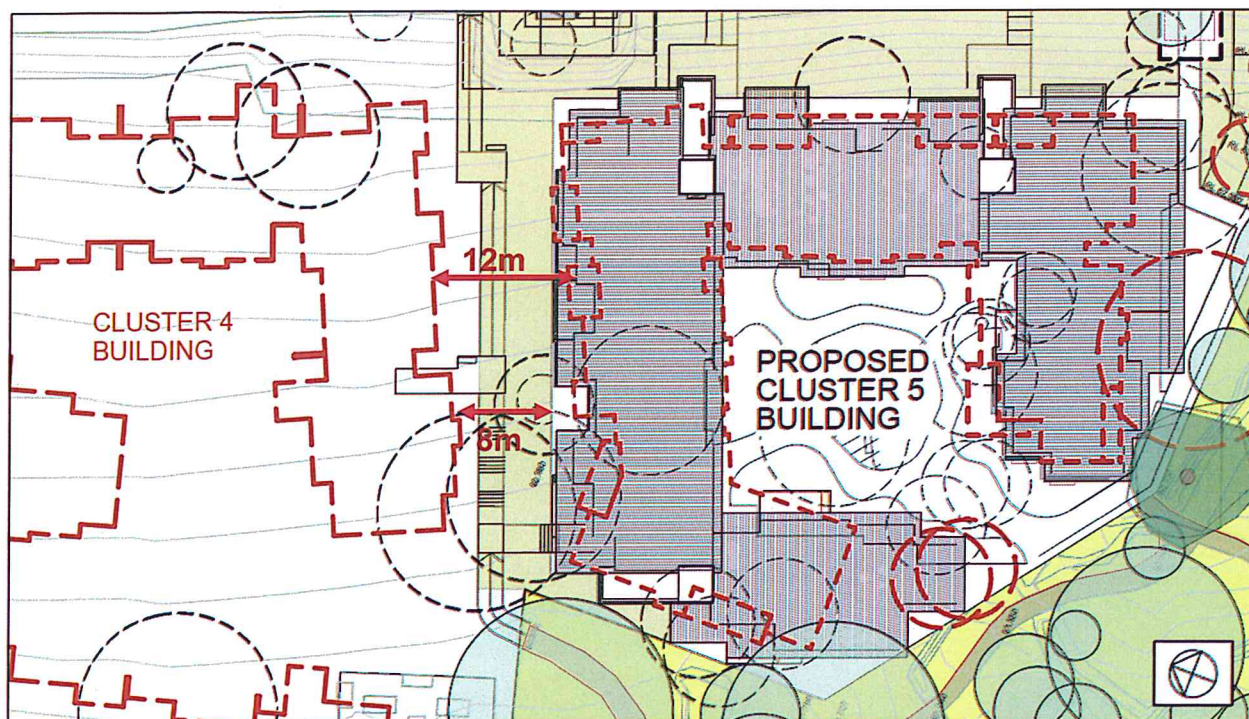


Figure 9: Site plan showing reduced building separation between Clusters 4 and 5

In relation to Clusters 4 and 5, the RFDC recommends 12 metres separation. Habitable rooms and balconies on the northern elevation of Cluster 5 will have a separation of 8 - 12 metres from Cluster 4. Despite having less separation than recommended by the RFDC, an acceptable level of privacy can be achieved between the two buildings as:

- dwellings in Cluster 4 have their primary living rooms and balconies oriented away from Cluster 5. Windows facing towards Cluster 5 are limited to bedrooms, bathrooms and a kitchen window, all of which could be treated to mitigate overlooking impacts (by measures such as increased sill heights or privacy screening); and
- there is sufficient separation to allow dense tree (or hedge) planting between the buildings which will also mitigate privacy impacts. Landscape plans submitted with the modification request incorporate dense tree planting to this area.

A condition is recommended requiring the incorporation of privacy treatments to ensure privacy between the two buildings. With the inclusion of appropriate privacy treatments, the modified proposal would not result in any unacceptable overlooking impacts.

Despite the increase in height, more than 80% of dwellings within the site will receive in excess of 3 hours of solar access mid-winter, well in excess of the 70% recommended by the RFDC and above the 70% standard set by the clause 50 of the Seniors Housing SEPP, with the outcome that consent cannot be refused on the basis of overshadowing impacts. The proposal results in no overshadowing impacts to premises outside of the site.

The proposal is therefore considered to provide a high level of internal amenity with no additional impacts on surrounding properties.

5.6 Stormwater Management

Council requested that consideration be given to requesting a Model for Urban Stormwater Improvement Conceptualisation (MUSIC) to demonstrate the effectiveness the proposal with respect to pollutant loads of the development.

Stormwater management was assessed as part of the original application and a MUSIC model was not provided or required. Updated stormwater plans were submitted with the modification request to reflect the revised layout. However, overall building footprints have not been increased, and total landscape areas and deep soil areas have not been altered by the proposal.

The modifications in themselves therefore do not give rise to the need for a MUSIC model to be submitted with the modification request. Nevertheless, the proponent has advised that MUSIC modelling is currently being undertaken and will be completed prior to any further construction certificates being issued for the site.

The Department is satisfied that the modification request suitably manages stormwater on the site.

6. CONCLUSION

The Department has considered the proposed modifications to the project approval and the key issues associated with these modifications. The proposed modifications allow for increased Seniors Housing provision for the region, while resulting in no material adverse impacts to the locality or the site.

Despite some increases in building scale, the proposed buildings will present a scale to the surrounding streets which is generally consistent with local planning controls and the envisaged character of the zone. The modification will also result in a high level of residential amenity for future residents, generally consistent with that achieved by the original Project Approval. No material traffic or parking impacts arise from the proposal, and any impacts to Cumberland Plain Woodland are managed and offset by additional tree planting on the site.

No objections have been received in relation to the proposed modification.

It is therefore recommended that the modification request be approved, subject to conditions, as outlined in the recommended Modifying Instrument.

7. RECOMMENDATION

It is RECOMMENDED that the Director, Key Site Assessments, as delegate for the Minister for Planning and Environment:

- **note** the information provided in this report;
- **approve** the modification request, subject to conditions; and
- **sign** the attached modifying instrument.

Endorsed by:

AWatson

Amy Watson
Team Leader
Metropolitan Projects

Approved by:

BL 13.4.15

Ben Lusher
A/Director
Key Sites Assessments