

**GR2 – Applications to Modify Development Consent No. 010.2005.00051506.005 and No. 010.2005.00051506.006 – 20 Brundah Road, Thirlmere**

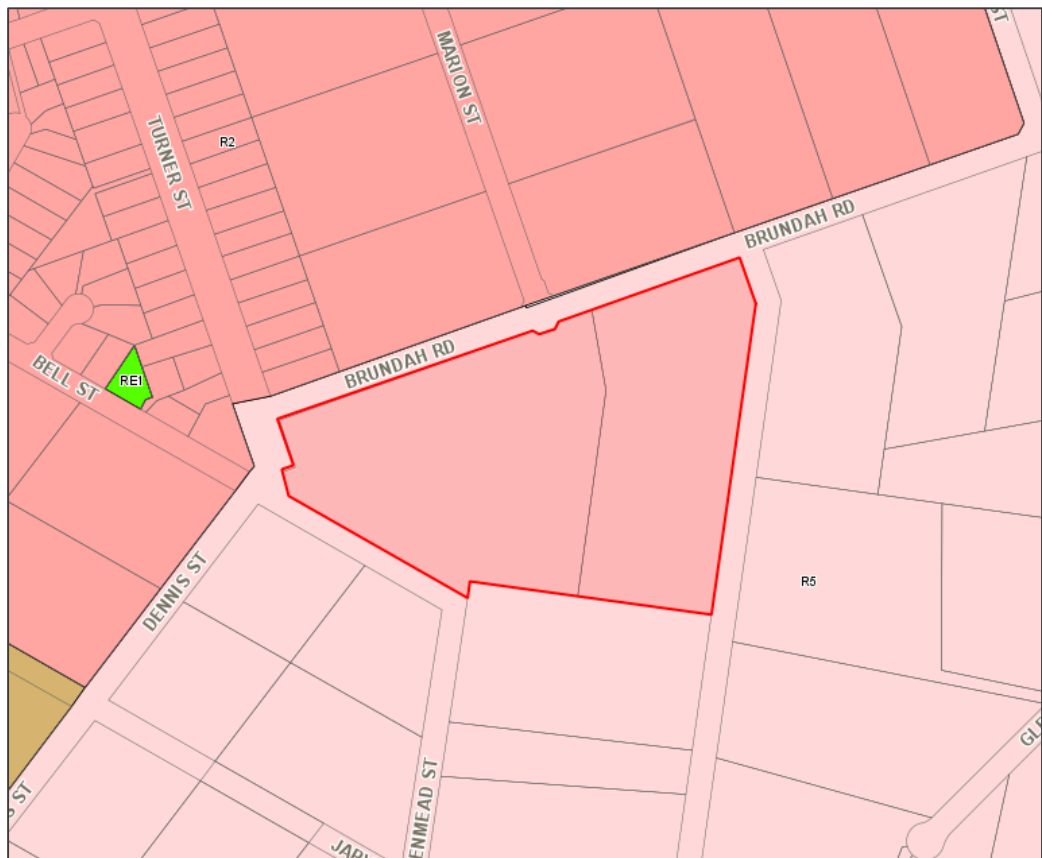
GR2

**Applications to Modify Development Consent No. 010.2005.00051506.005 and No. 010.2005.00051506.006 for a Seniors' Living Development to provide an Additional 3 Self Care Units, Managers' Residence, Maintenance Shed, Wellness Centre, Men's Shed, and to Relocate Approved Swimming Pool – 20 Brundah Road, Thirlmere**

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010.2005.00051506.005  
& 010.2005.00051506.006

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**LOCATION & ZONING MAP N**

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**DEVELOPMENT INFORMATION**

<b>Development Application No:</b>	010.2005.00051506.005 & 010.2005.00051506.006
<b>Property Details:</b>	20 Brundah Road, Thirlmere
<b>Applicant:</b>	Mr M Doosey
<b>Owner:</b>	Bluegum Lifestyle Resort Pty Ltd
<b>Proposal Details:</b>	Modification of consent for a Seniors' Living Development
<b>Zone:</b>	WLEP - R5 Large Lot Residential

**EXECUTIVE SUMMARY**

- Council considered a report on the application at its meeting of 17 July 2017.
- The application was recommended for refusal.
- Council resolved that the application “be deferred to permit further discussion between the Proponent and staff and be brought back to Council in September 2017.”
- The applicant has amended the current modification request to reduce the number of additional dwellings to four, comprising three by one bedroom seniors’ living units and a two bedroom manager’s residence.
- The amended application includes a new Maintenance Shed, Wellness Centre and Men’s Shed, and relocation of the approved Swimming Pool.
- The current amended modification applications were advertised from 16 to 31 October 2017 in accordance with Council’s adopted notification requirements. One (1) submission was received in respect to the proposed relocation of the proposed pool.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended that the amended application (010.2005.00051506.005) and the new section 96AA modification application (010.2005.00051506.006) be supported.
- That both applications be determined under Delegation following resolution by the applicant of the matters identified in this report.

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**REPORT**

**BACKGROUND**

The development was originally approved by the Court in 2006, on appeal to Council's refusal of the application.

Council has approved three previous modifications to the consent, the most recent approval was granted 1 August 2014.

DD010.2005.00051506.005 was reported to Council at its meeting of 17 July 2017. The report provided a history of the development and previous modifications and issues identified by comparison of the development consent plans and the Construction Certificate plans.

The application was recommended for refusal.

Council resolved that the application “be deferred to permit further discussion between the Proponent and staff and be brought back to Council in September 2017.”

The applicant has amended the current modification request to reduce the number of additional dwellings to four, comprising three by one bedroom seniors’ living units and a two bedroom manager’s residence.

The amended application includes a new Maintenance Shed, Wellness Centre and Men’s Shed, and relocation of the approved Swimming Pool.

A new section 96 modification application DD010.2005.00051506.006 has been lodged to rectify the differences between the development consent approved plans and the Construction Certificate plans, in order to assess, and ensure, the changes comply with the provisions of the Seniors Living SEPP and address any other assessment issues associated with the changes.

**CONSULTATION**

By email dated 26 July 2017, the consultant (acting on behalf of the applicant), was provided with advice on a suggested way forward for the application. The consultant responded on the same day by email, raising a number of issues with the suggested approach.

A meeting was held on 15 August 2017 with the applicant and their consultant.

As a result, agreement was reached for how to proceed with the application. Details are provided through this report.

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**1.1 DESCRIPTION OF SITE AND SURROUNDING AREA**



Figure 1 Aerial Imagery (Source - NearMap 28 May 2017)

The subject land is described as Lot 1 DP 1227417, 20 Brundah Road Thirlmere. The northern boundary has frontage to Brundah Road, with the western boundary adjoining Turner Street and part of the southern boundary adjoining Bell Street. The eastern boundary adjoins an unformed Crown road. The site has an area of 7.151ha.

Stages 1 and 2 of the approved Seniors Living development have been completed, including the community hall and bowling green. Stage 4 has proceeded ahead of Stage 3. Stage 4 is predominately constructed. Stage 3 has not commenced, other than some preparatory earthworks.

Land to the north of the site is zoned for low density residential development. The village of Thirlmere is located to the north west of the site, with large lot residential development adjoining the other boundaries of the site.

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**1.2 Description of Development**

**Modification Application DA010.2005.00051506.005**

The section 96AA modification application deferred by Council at its meeting of 17 July 2017 has been amended to propose the following:

1. Three by one bedroom self-care units (reduced from 20 units in the original modification application reported to Council in July 2017)
2. Relocation of the swimming pool
3. Construction of a Men's Shed
4. Construction of a Maintenance Shed
5. Construction of a Wellness Centre
6. Construction of a Managers residence containing two bedrooms
7. Caravan and car parking
8. Relocation of the internal access roads "Dingo Road" and "Bandicoot Road" to accommodate proposed future additional self-care units which will be the subject of a separate development application.

**Modification Application DA2005/51506.006**

A new section 96AA modification application has been lodged to address issues reported to Council on 17 July 2017, relating to differences between the approved development application plans and the Construction Certificate plans. The application seeks approval for the following:

- a) Changes to the dwelling locations, for stages 3 and 4, including reduced setbacks to the eastern side boundary and rear boundary
- b) Changes to the road layout in Stages 3 and 4
- c) Deletion of a landscaped strip adjacent the eastern boundary
- d) Changes to the dwelling floor plans, and elevations for Stages 3 and 4
- e) Changes to the Community Centre building floor plan and elevations,
- f) Extension and relocation of retaining walls
- g) Changes to the arrangement and location of visitor parking.

**1.3 Assessment**

**1.3.1 Section 96AA: Substantially Same Development Test**

Section 96AA provides:

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:*



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- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has notified the application in accordance with:*
- i. the regulations, if the regulations so require, and*
  - ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application

Is the proposal substantially the same development?

Section 96AA(1)(a) requires the modification proposal to be compared with the original development approval. For this reason, it is proposed to assess the total changes proposed by both modification applications.

Case law requires a “qualitative and quantitative” assessment of the proposal to determine if it is substantially the same development.

The key factors considered to be relevant:

- A 4% increase in the number of dwellings
- A 22% increase in gross floor area
- A 21% increase in total bedrooms
- A 65% increase in garages.



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The total increase in a number of the components is becoming significant. In the circumstances, it is considered that the proposal is approaching the limit of what is reasonably considered to be substantially the same development.

The case law considers the power of section 96 to be “beneficial and facultative” (Houlton v Woollahra Council (1997) 95 LGERA 201).

In the circumstances, the proposed amendments to the plans, and addition of four dwellings and other structures, are considered best to be managed by way of modification to the consent, rather than attempting to compile a fresh development consent to deal with the changes.

Considering the Case Law above, it is considered reasonable to accept that the proposal is substantially the same development.

It is considered that any future proposal for additional dwellings should not be considered as a section 96 application, as the development, as modified, has reached the limit of reasonable application of the test for “substantially the same development”.

**1.3.2 PROVISIONS OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS**

**State Environmental Planning Policy (BASIX)**

The application includes BASIX certificates for each new dwelling.

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

A detailed assessment under the Seniors Living SEPP identified the following matters to be addressed by the applicant prior to the grant of approval of the modifications:

- (1) Provision of certification by a qualified engineer of the structural integrity of the retaining walls and evidence of approval of Subsidence Advisory NSW.
- (2) Submission of an amended Landscaping Concept Plan that:
  - (a) Reflects the proposed amended site plan,
  - (b) Provides for perimeter hedge planting as proposed in the approved Landscape Plan between the eastern side boundary and the development, noting that the planting will need to be supplemented by planting between the perimeter access road and the dwellings within Stages 3 and 4,

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- (c) Demonstrates compliance with the minimum landscaped area of 30% site area and minimum 15% site area to be deep soil zones.
- (3) Submission of a revised Bushfire Assessment Report that relates to the proposed additional buildings.
- (4) Submission of a site wide wheelchair access plan that reflects the amended site plan and provides a continuous accessible path of travel, complies with the Seniors Living SEPP and AS 1428, including access to the proposed pool and letterboxes.
- (5) Demonstrate compliance with the requirements disability access for private parking spaces in accordance with Schedule 3, Item 5 of the Seniors Living SEPP.
- (6) Identify the location of garbage storage areas residents and the provision of separate containers to facilitate separation of the waste stream.

**Wollondilly Local Environmental Plan, 2011**

The land is zoned R5 Large Lot Residential. Residential accommodation, including Seniors Housing, is permissible with consent in the zone.

Matters for consideration are:

- (1) Aims of the Plan (Clause 1.2):
  - (d) to encourage development that provides for an integrated transport and infrastructure system and adequate facilities and service provision for future growth,

Assessment

The development proposes an increase of three by one bedroom dwellings and a manager's residence. Under Council's Development Contributions Plan 2011, these dwellings would be assessed as increasing the demand for a range of services, facilities and infrastructure. However, there is case law indicating that, if a section 96 modification proposes amendment to a development consent that is not subject to the payment of contributions, then a section 94 contribution condition cannot be imposed.

The Contributions Plan does provide (clause 2.4) for Council to waive, vary or discount contributions depending upon the circumstances of the case. Notwithstanding the abovementioned case law, in the current case, it may be reasonable to waive any contribution that may have otherwise applied having regard to the following:





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- The dwellings are small dwellings, and likely to have a lower occupancy rate
- The development provides a local bus service that would reduce the number of car trips generated by the development
- Services are provided on site for residents, in the form of a bowling green, (proposed) swimming pool, and community hall
- The development was required to construct a footpath from the site along Turner Street to Rita Street (which has been completed) and provides a material public benefit.

In the circumstances, it is not unreasonable to forego development contributions that may have otherwise been levied against the development.

(2) Objectives of the R5 Zone:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

Assessment

The proposed modification will result in a decreased setback to the eastern side boundary. The impacts of this reduction are mitigated to an extent due to the existence of a 20m wide Crown Road reserve that adjoins the eastern boundary, and provides for a separation from the land to the east. Provided an amended Landscape Concept Plan is submitted, as flagged above, to provide for planting between the eastern side boundary and the dwellings in Stages 3 and 4, the reduction in side setback is considered to be acceptable.

As noted above, it is considered that the modification does not unreasonably increase the demand for public services or public facilities.

The proposed modification will not significantly change the nature of any conflicts between land uses within the zone.

**1.3.3 PROVISIONS OF RELEVANT DEVELOPMENT CONTROL PLANS**

The development proposal is subject to Wollondilly Development Control Plan 2016 (WDCP 2016) Volume 4 - Residential Development. Part 2 of Volume 4 provides general requirements for all residential development. The DCP does not provide specific controls for Seniors Housing.

The relevant general controls are assessed in the following table.

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<b>Part 2 – General Requirements for All Developments</b>		
<b>2.1 Alterations and Additions</b>		
<b>Objectives</b>		
1.	To provide clarity and consistency in the assessment of applications to alter and expand development subject to this volume.	
2.	To provide clarity and consistency in the assessment of applications for continued use of unauthorised works.	
<b>Controls</b>		
1.	A proposal for alterations and/or additions to an existing development shall be assessed as though both the existing and proposed development were proposed as a single application.	Noted.
2.	The controls within this plan shall apply only to the alterations and/or additions and shall not be retrospectively applied to existing development that was lawfully undertaken.	Noted.
3.	This control applies to development sites that include existing unauthorised works where an application seeks consent for continued use of those works. Unauthorised works shall be assessed under this plan in the same way that the works would have been assessed if the application had been made prior to the work being undertaken.	Noted. Applicant has lodged application for approval for works that are considered to be inconsistent with the development consent.
<b>2.11 Stormwater</b>		
<b>Objectives</b>		
1.	To ensure that stormwater from buildings is collected and conveyed in a manner that does not cause environmental harm.	
2.	To retain, as far as practicable, natural stormwater flows.	
<b>Controls</b>		
1.	Stormwater from new dwellings (other than water to be recycled for use on site) must be directed to at least one of the following to Council’s specifications: <ul style="list-style-type: none"> <li>• Street drainage system;</li> <li>• Drainage easement;</li> <li>• Natural drainage path.</li> </ul> Council may consider the use of absorption trenches or similar on large lot residential or rural lots where one of the measures above cannot be satisfied.	Stormwater disposal extends onto the adjoining Crown road reserve. Works to be removed or land owners’ consent to be obtained by the applicant.

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3.	The proposed dwelling and any associated stormwater drainage measures shall account for the existing drainage patterns of the area and shall not contribute to any localised ponding, nuisance flooding on adjoining properties, or impacts to overland flow or natural drainage paths.	Onsite detention is proposed to achieve compliance.
4.	All stormwater disposal systems shall be in accordance with Council's Engineering Design Specifications.	Noted. Consent condition able to address this requirement.

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**1.3.4 DRAFT AND/OR PLANNING AGREEMENTS ENTERED OR OFFERED TO ENTER INTO**

None

**1.4 IMPACT OF THE DEVELOPMENT**

Head of Consideration	Comment
Natural Environment	No significant impact.
Built Environment	Proposed side setback is a substantial reduction. The Crown road reserve provides separation from land to the east. Subject to additional planting within the site between the proposed perimeter road and the dwellings in Stages 3 and 4, the development will not be unreasonable.
Social Impacts	The impact on demand on services and facilities is not considered to be unreasonable given the nature of the proposed modification, the services provided onsite and for the development.
Economic Impacts	The development will generate additional population that will contribute to the local economy. The impact on the financial resources of the Council, and the community, as a result of the loss of contributions that would otherwise apply to this development are considered reasonable having regard to the circumstances of the case. Any future proposed increase in the number of dwellings will be required to be undertaken as a new development application and will be assessed under Councils' Development Contributions Plan.

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**1.5 SUITABILITY OF THE SITE**

The site is already developed for Seniors Housing. Subject to addressing the matters identified in this report, the site is considered suitable for the proposed development.

**1.6 SUBMISSIONS**

The amended application was advertised from 16 to 31 October 2017 in accordance with Council's adopted notification requirements. One (1) submission was received.

The submission is from a current resident of the development. The submission objects to the relocation of the proposed pool for the following reasons:

- The current proposed location adjacent the Community Hall is considered to be a preferable arrangement with access to large change room and showering facilities
- The proposed location is isolated from the higher activity area around the Community Hall, with reduced passive surveillance and increased safety risk
- The proposed new amenities building adjacent the relocated pool is too small.

**Assessment**

The new pool location includes a new amenities building containing change, toilet and showering facilities. Location of the pool adjacent the Community Hall is considered to be notionally preferred location, with synergies of activity, the applicant considers that pool users will prefer the lower exposure from view in the new location.

Provided the new pool location achieves compliance in terms of accessibility for facilities under the Seniors Living SEPP and with fencing and safety requirements of the Swimming Pools Act and related legislation, there is no requirement for the pool to be located adjacent the Community Hall.

**1.7 THE PUBLIC INTEREST**

Having regard to the circumstances of the case, and the minor increase in the number of dwellings proposed, it is considered the proposed modifications are not in significant conflict with the public interest.



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**1.8 FINANCIAL IMPLICATIONS**

It is noted that the development will give rise to an increase in demand for public services and facilities if it were assessed under Council's Development Contributions Plan. As discussed in the report, having regard to the modest increase in the number and the small size of, proposed dwellings, the provision of transport and facilities on site and the pedestrian path constructed as a condition of consent to the development, it is considered that the development will not have significant financial implications.

**ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET**

1. Plans submitted with modification applications.

**RECOMMENDATION**

1. That the application 010.2005.00051506.006 be determined under delegation following action by the applicant on the following matters to the satisfaction of the Director Planning:
  - (a) Provision of certification by a qualified engineer of the structural integrity of the retaining walls and evidence of approval of Subsidence Advisory NSW.
  - (b) Submission of an amended Landscaping Concept Plan that
    - (i) reflects the proposed amended site plan,
    - (ii) provides for perimeter hedge planting as proposed in the original approved Landscape Plan, between the eastern side boundary and the development, noting that the planting will need to be supplemented by planting between the perimeter access road and the dwellings within Stages 3 and 4,
    - (iii) demonstrates compliance with the Seniors Living SEPP in regard to the minimum landscaped area of 30% site area and minimum 15% site area to be deep soil zones.
  - (c) Submission of a revised Bushfire Assessment Report that relates to the proposed additional buildings (with subsequent grant of a Bushfire Safety Authority by the RFS).
  - (d) Submission of a whole of site wheelchair access plan that reflects the amended site plan and provides a continuous accessible path of travel, compliant with the Seniors Living SEPP and AS 1428, including access to the proposed pool and letterboxes.
  - (e) Demonstration of compliance with the requirements of disability access for private parking spaces in accordance with Schedule 3, Item 5 of the Seniors Living SEPP.
  - (f) Identify the location of garbage storage areas residents and the provision of separate containers to facilitate separation of the waste stream.



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- (g) Stormwater disposal works within the adjoining Crown road reserve shall be removed/relocated, or land owners' consent for the works is to be obtained from NSW Department of Industry (Lands) by the applicant.
2. That the application 010.2005.00051506.005 be determined under delegation following action by the applicant on the following matters to the satisfaction of the Director Planning:
- (a) Provision of certification by a qualified engineer of the structural integrity of the retaining walls and evidence of approval of Subsidence Advisory NSW.
  - (b) Submission of an amended Landscaping Concept Plan that
    - (i) reflects the proposed amended site plan,
    - (ii) provides for perimeter hedge planting as proposed in the original approved Landscape Plan, between the eastern side boundary and the development, noting that the planting will need to be supplemented by planting between the perimeter access road and the dwellings within Stages 3 and 4,
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  - (f) Identify the location of garbage storage areas residents and the provision of separate containers to facilitate separation of the waste stream.
  - (g) Stormwater disposal works within the adjoining Crown road reserve shall be removed/relocated, or land owners' consent for the works is to be obtained from NSW Department of Industry (Lands) by the applicant.