

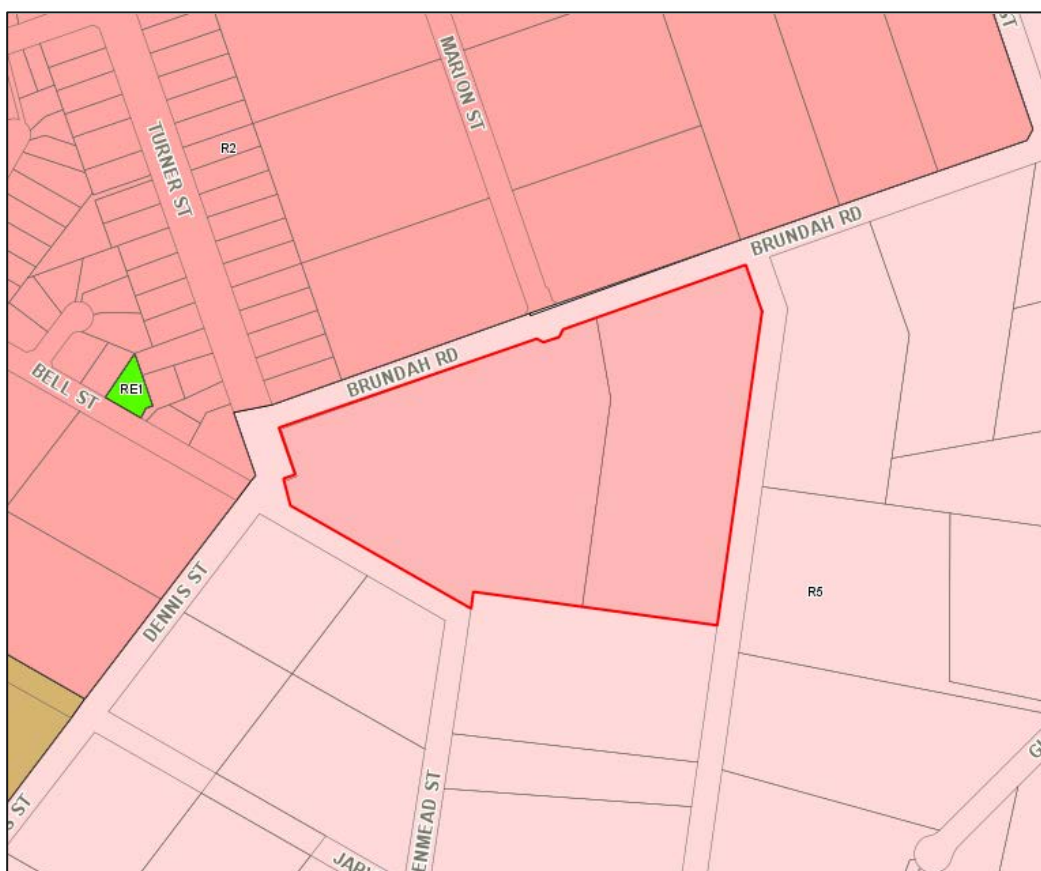
Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 17 July 2017

**PE1 - Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**PLANNING AND ECONOMY**

**PE1**      **Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**  
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LOCATION MAP ↑ N

**DEVELOPMENT INFORMATION**

<b>Development Application No:</b>	010.2005.00051506.005
<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 to provide for an Additional 20 Self Care Units, Car and Caravan Parking, and to Relocate Approved Swimming Pool
<b>Zone:</b>	WLEP - R5 Large Lot Residential

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 17 July 2017

**PE1 - Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**EXECUTIVE SUMMARY**

- The development was originally approved by the Court in 2006, on appeal to Council's refusal of the application.
- Consent is sought for modification to the Development Consent ID532-05 for Seniors Living Development Comprising 111 Self Care Units, Community Centre, Bowling Green, Swimming Pool, Retaining Walls, Landscaping, On Site Wastewater Management System and Associated Infrastructure at 20 Brundah Road Thirlmere.
- The modification proposes to provide for an additional 20 Self Care Units, Car and Caravan Parking, and to Relocate the Approved Swimming Pool.
- Council has approved three previous modifications to the consent, the most recent approval was to modify staging and amend Stage 2 by changing 6 x two bedroom dwellings to 6 x three bedroom dwellings (total in Stage 2 is 2 x two bed and 24 x three bed) granted 1 August 2014.
- The current application was advertised from 21 September 2016 until 7 October 2016 in accordance with Council's adopted notification requirements. Five (5) submissions were received relating to stormwater flows from adjoining neighbours and objecting to changes to the internal layout by residents of the Retirement Village.
- During the course of assessment of this current modification request, numerous anomalies were identified on site between the approved development consent plans, and the completed stages of the development.
- Investigation indicates construction certificates issued by a private Principal Certifying Authority (PCA) may not be valid and independent action is being pursued in respect to this issue.
- The matter is reported to Council having regard to the history of the consent and the seriousness of issues discovered during the course of assessment.
- 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 application be refused as it is deficient in respect of a number of information requirements and the proposed development, when modified as proposed, is considered to be not substantially the same development as approved by the Court in 2006.

**PE1 - Application to Modify Development Consent No.  
010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**REPORT**

**BACKGROUND**

**Original Consent**

The original consent was granted by the Land and Environment Court on 20 September 2006, following Council's refusal and appeal by the applicant.

The original consent described the development as "Seniors Living Development Comprising 111 Self Care Units, Community Centre, Bowling Green, Swimming Pool, Retaining Walls, Landscaping, On Site Wastewater Management System and Associated Infrastructure".

Consent conditions stated the development was to be carried out in four stages, and required the development to be undertaken in accordance with approved plans. The approved plans provided for 111 self care units, comprising 55 x three bedroom and 56 x two bedroom dwellings.

**Summary of Previous Modification Applications**

- (a) First Modification (file 2005.00051506.002) Issued 27 October 2008  
Conditions 12.1 and 12.2 were modified to enable a change in the design of the roundabout that provided access to the site from Brundah Rd, and to delay dedication of public road that contains the roundabout.
- (b) Second Modification (2005.00051506.003) Issued 26 August 2013
  - Staging changed: Reduced dwellings in Stage 1 (by one) and Stage 3 (by six) and increased in Stage 4 (by seven),
  - Change to Stage 1 details including change to house design types: 6 x two bed and 17 x three bed changed to 23 x three bed, (total 61 x three bed and 50 x two bed)
  - Connected to sewer – deleted all requirements relating to onsite treatment plant and disposal,
  - Additional site area available for development as a result, and
  - Changes to landscaping plan.
- (c) Third Modification (2005.00051506.004) Issued 1 August 2014
  - Staging changed: Increased dwellings in Stage 2 (by two), reduced in Stage 4 (by two). This was enabled due to extra site area available in Stage 2 due to connection to sewer,
  - Stage 2 details including change to house design types: 2 x two bed (originally 8) and 24 x 3 bed, (total now 67 x three bed and 44 x two bed)
  - Barbecue area added, and
  - Visitor parking relocated due to two extra dwellings.

**PE1 - Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**Unauthorised Changes**

- (a) Unauthorised Changes as a result of approval of Construction Certificates by Private PCA
- Changes resulted in the development to be comprised of 103 x three bed and 8 x two bed dwellings, including reduced setbacks to eastern boundary (Construction Certificate 537/2010, dated 15 October 2015, issued by the PCA), and
  - Change to the size, orientation and footprint of the Community Centre building (note – Community Centre not constructed in accordance with Construction Certificate 537/11, dated 11 March 2011, issued by the PCA).
- (b) Unauthorised Changes as a result of approval of engineering design plans by Council
- Internal access road in Stage 3 extended, and located closer to Brundah Rd frontage,
  - Perimeter road on eastern side relocated from an 18m setback to a nil setback to the boundary, and removal of the landscaped area along the eastern boundary, and
  - Substantial re-arrangement and partial relocation of visitor parking.
- (c) Other Unauthorised Changes
- The original consent indicated the need for retaining walls. Indicative heights were around 3m. Site inspection reveals retaining walls have been constructed up to 3.8m in height and extend further east than the approved location. The retaining walls prevent the eastern perimeter road being built in the location approved in the development consent.

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**Table 1: Summary of Changes**

	Bedrooms			Other changes
	1	2	3	
<b>Original Consent</b>	0	56	55	
<b>Modification 1</b>	0	56	55	Roundabout design, road dedication
<b>Modification 2</b>	0	50	61	Connected to sewer, staging change
<b>Modification 3</b>	0	44	67	Staging changed, barbecue area added, visitor parking relocated
<b>Unauthorised (CC)</b>	0	8	103	Community Centre, setbacks reduced, internal road locations
<b>Proposed</b>	6	16	109	Various additional changes - see Description of Development

**PE1 - Application to Modify Development Consent No.  
010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**CONSULTATION**

The applicant contacted Council in February 2016 to discuss the proposed additional 20 units and a range of other modifications to the development. After some initial exchange of information, Council staff indicated (email dated 4 March 2016) that the additional units, car parking and pool relocation could be processed as an application to modify the consent. The section 96 application was subsequently lodged on 15 April 2016. This was to ensure the application satisfied legislative requirements under the Environmental Planning and Assessment Act 1979 (the Act).

By letter dated 24 October 2016, Council requested the applicant to provide a detailed assessment of how the proposed development, as modified, is substantially the same as the original development, including a quantitative and qualitative assessment of the elements of the development.

By letter dated 18 November 2016, the applicant submitted the requested assessment.

On 2 March 2017, a meeting was held with the applicant to advise that Council officers:

- were not satisfied that the proposal was substantially the same development,
- were unlikely to recommend approval of a development application for the proposed development in its current form due to issues related to setbacks and landscaping,
- were unable to properly assess the proposal due to the inaccuracy of the submitted plans and that any future application must be based on a current survey of the site, and
- have identified a number of variations between the development consent and Construction Certificates issued for buildings on the site and that the applicant should seek expert advice in respect to how to rectify these matters.

By letter to the applicant dated 10 March 2017, Council confirmed the advice provided at the meeting of 2 March 2017, and requested the applicant provide written advice in response within 14 days.

On 8 May 2017, Rein Warry and Co Pty Ltd provided a written submission on behalf of the applicant that sought to demonstrate why the proposed modification was substantially the same development and requested that Council determine the application accordingly. The submission included a plan that purports to represent the approved development with an overlay of the proposed development. This is discussed below.

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 17 July 2017

**PE1 - Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**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 has 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 adjoin the other boundaries of the site.

Planning & Economy

**PE1 - Application to Modify Development Consent No.  
010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**1.2 DESCRIPTION OF DEVELOPMENT**

Modifications Specified in the Application

The application specifies the modification is for an additional 20 self care units, additional car and caravan parking areas and the relocation of approved swimming pool.

Modifications Implied by Plans Submitted with the Application

The plans submitted with the application include:

- changes to the development resulting from approval of Construction Certificates issued by a private PCA in respect to the layout, size and design of dwellings in Stage 3 of the development (Construction Certificate 537/2010), and in respect to the location, design and internal arrangement of the Community Hall building (Construction Certificate 537/11), and
- changes to the location of internal access roads resulting from approval of engineering design plans by Council certifier.

It should be noted that the submitted plans are poorly drawn. Further, upon site inspection, it appears that constructed buildings are not accurately shown on the submitted plans. This creates considerable doubt in respect to the location of buildings not yet constructed and the setbacks shown on the submitted plans. The poor quality of the plans prevents a proper assessment of the application in respect to a range of development controls that apply. This is detailed further below.

Additional Plans Submitted on behalf of the Applicant by Rein Warry & Co

Rein Warry and Co submitted a site plan showing buildings claimed to be approved, and provided an overlay showing the location of buildings proposed in the modification application.

This plan appears to further modify the current modification application to include the changes to buildings (location and size) in Stage 4, approved under Construction Certificate Construction Certificate 537/2010 issued by a private PCA, and the changes to internal roads shown in engineering design plans approved by Council certifier.

The following issues arise with the site plan submitted by Rein Warry & Co:

- it is not based on a current survey as it clearly misrepresents the size and location of the existing Community Hall building,
- the building footprints shown as “Approved” in Stage 4 do not align with the current approved plans in the development consent, and
- the building footprints shown as “Proposed” are in different locations than those shown in the plans submitted with the current modification application.

**PE1 - Application to Modify Development Consent No.  
010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

However, this plan does appear to be a more accurate representation of the proposed location of buildings in Stages 3 and 4, and could form the basis for a proper assessment of the application, subject to the provision of additional information (a scale bar, dimensions, ground levels, contours) together with elevations, road gradients, footpaths, wheelchair access, etc.

**1.3 ASSESSMENT**

**1.3.1 SECTION 96: SUBSTANTIALLY SAME DEVELOPMENT TEST**

Section 96 (2) of the Act allows Council to modify development consents, provided Council is satisfied that the modified development is substantially the same development as the original development that was granted consent.

The applicant was advised that Council was not satisfied, by letter dated 10 March 2017. A submission was lodged on behalf of the applicant by Rein Warry & Co dated 8 May 2017.

The submission makes the following points in support of a conclusion that the development as modified will be substantially the same:

- *The approved development is a retirement village, and the development as modified will be a retirement village,*
- *The approved development included an onsite waste water management system, but since approval, the site has been connected to a reticulated sewerage system,*
- *The approved wide setbacks were for wastewater irrigation that are no longer required,*
- *The site has been rezoned R5 since the original consent, but development still relies on the Seniors Housing SEPP for permissibility as Seniors Housing is not listed as a permissible use in Zone R5 (Note: R5 permits Residential accommodation, which includes Seniors housing),*
- *The nature of the surrounding area has had a dramatic change and the future appearance of this area will be significantly different from that existing today, but this is a merit consideration only as part of the assessment of the application,*
- *There is very little difference in the essence of the development,*
- *A quantitative comparison indicates an increase of 11% in the number of buildings, an increase of 7.6% in the number of bedrooms, an increase in the FSR from 24.9% to 28.6%, an increase of 12.2% in total car spaces,*



**PE1 - Application to Modify Development Consent No.  
010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

- *A qualitative comparison identifies that there is a lot of interest from potential residents seeking single bedroom units with no covered car space, the modification uses part of the site that was sterilised by the onsite sewerage management system, the modification makes more efficient use of the site now that it is connected to reticulated sewer, the reconfiguration provides opportunity for well located accommodation, onsite community facilities are under-utilised and more residents will enable more sustained and efficient use of facilities, there will be increased demand for units, there will be more community facilities on site, relocation of the pool will provide or expansion of the community centre, the proposed re-configuration uses land that is no longer required for waste water management without impact on accessibility within the site.*

Comment:

Changes to Development Description

The Court issued consent described the development as follows:

*Seniors Living Development Comprising 111 Self Care Units, Community Centre, Bowling Green, Swimming Pool, Retaining Walls, Landscaping, On Site Wastewater Management System and Associated Infrastructure.*

The proposed modification requires a change in the description of the development, as well as modification to a number of consent conditions.

It is considered that a modification that requires a change in the development description must give rise to an initial perception that the development is no longer substantially the same.

Quantitative Changes

The Rein Warry submission is based on the following stated components of the development proposed in the current modification application:

- 6 x one bedroom dwellings,
- 71 x two bedroom dwellings,
- 54 x three bedroom dwellings,
- Total of 131 units.

These numbers are incorrect. The proposal will result in the following:

- 6 x one bedroom dwellings,
- 16 x two bedroom dwellings,
- 109 x three bedroom dwellings,
- Total of 131 units.

**PE1 - Application to Modify Development Consent No.  
010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

Compared with the original consent, the following quantitative changes are proposed:

- Increase in total dwellings – 18%,
- Increase in gross floor space – 30.3%,
- Increase in total bedrooms – 29.6%,
- Increase in total garages – 40.1%.

It is considered these factors establish a proposed quantitative change to the development when compared with the development as originally approved.

Qualitative Changes

The reasons for the proposed modifications are stated to be:

- The site is now serviced by reticulated sewerage, so the potential development yield for the site is increased as effluent disposal areas around the perimeter of the site are no longer required,
- The developer has identified a new market demand for single bedroom units, which apparently did not exist at the time the original consent was granted.

The proposed modification substantially changes the mix of dwelling types, introducing one bedroom dwellings to the development, with a reduction in two bedroom dwellings from 56 to 16 and an increase in three bedroom dwellings from 55 to 109.

The changes to the location of roads, significant reduction to front and side setbacks and the loss of space for landscaping around the perimeter of the site all contribute to qualitative changes to the development.

Changes to the Community Hall, internal access roads and driveways may have resulted in non-compliance with the Seniors Living SEPP in terms of:

- Location and access to facilities (clause 26) including maximum permissible gradients, and lengths of pathways,
- Availability of transport facilities and the impact of the built form and character on the locality (clause 29),
- Amenity and streetscape (clause 33), including recognition of the character of the location, and to retain where possible major existing trees,
- Accessibility (clause 38),
- Landscaped area and deep soil zones (clause 50),
- Schedule 3:
  - Wheelchair access must be provided to at least 50% of dwellings by a continuous path of travel to an adjoining public road or an internal driveway that is accessible to all residents,
  - Wheelchair access must be provided to all common areas and common facilities (including the swimming pool),
  - Accessible entry and internal circulation,
  - Bathroom, toilet and surface finishes requirements,
  - Internal layouts and services.

**PE1 - Application to Modify Development Consent No.  
010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

The submitted information is insufficient to determine if the modified development still complies with the Seniors Living SEPP. If it no longer complies, this would be a qualitative change to the development.

It is considered these factors establish a proposed qualitative change to the development when compared with the development as originally approved.

Changes to Context and Circumstances Since Consent was Granted

The court judgement quoted by Rein Warry states:

“The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified but the comparison is qualitative as well as quantitative in the proper context including the circumstances in which the development consent was granted”. (Moto Projects (No.2) Pty Ltd v North Sydney C).

The circumstances in which development consent was granted were:

- The application was made almost immediately following the making of SEPP (Housing for Seniors or People with a Disability) 2004. At that time, the state government was attempting to address an urgent need for this type of housing, and at that time, there was a section 94E direction preventing Council from imposing a requirement to pay section 94 contributions for this type of development,
- The development potential of the site was restricted due to the unavailability of reticulated sewerage services,
- There was minimal population growth in the locality and a legacy of local services and facilities.

Since development consent was granted:

- Sewerage services have been extended to the locality,
- Population growth has significantly increased in the locality,
- Council has undertaken a range of urban planning initiatives to plan and manage this growth, including the provision of services, facilities and infrastructure,
- The state government has withdrawn the section 94E direction in respect to contributions,
- The Seniors Living SEPP has been modified 8 times,
- The definition of BASIX affected development under the Regulation has changed to include Seniors Housing development,
- The zoning of this site has changed from Zone No 1 (c1) (i) (Rural “C1 (i)” (Small Holdings) Zone) under Wollondilly Local Environmental Plan 1991 to R5 Large Lot Residential under Wollondilly Local Environmental Plan 2011.

**PE1 - Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

Change to Land included in the Development

Based on site inspection, construction works have extended onto the adjoining Crown road reserve. Engineering works show stormwater disposal structures within the Crown road reserve. The Crown road reserve was not part of the original development application.

Summary of Substantially Same Development Test

The context and circumstances are significantly different to those that existed at the time consent was granted. This requires a narrow interpretation, when assessing qualitative and quantitative changes to the development.

The proposed modification, when compared to the original consent:

- requires a change to the development description, and
- results in significant quantitative and qualitative changes to the development, particularly when considering the changes in context and circumstances since consent was granted, and
- includes land within the adjoining Crown road reserve that was not included in the original consent, and for which owners' consent has not been provided.

**1.3.2 PROVISIONS OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS**

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

The application does not address a range of provisions under the Seniors Living SEPP, including:

- Clause 30: Site analysis,
- Clause 31: Seniors Living Policy: Urban Design Guidelines for Infill development,
- Clause 33: Neighbourhood amenity and streetscape,
- Clause 34: Visual privacy,
- Clause 38: Accessibility,
- Clause 39: Waste management, and in particular, maximising recycling opportunities,
- Clause 41: Standards for hostels and self-contained dwellings
- Clause 50: Standards – landscaped area, and deep soil zones.

The development may be capable of complying with these provisions, however, this was unable to be determined from the submitted plans and application details.

The application included a list of the requirements set out in Schedule 3 of the SEPP, stating that the site and proposed new dwellings will comply with the development standards.

**PE1 - Application to Modify Development Consent No.  
010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

However, there is no demonstration that:

- wheelchair access has been provided in accordance with the standards,
- wheelchair access will be provided to the swimming pool,
- the proposed buildings/dwellings will comply with AS1428.1, or AS 4299.

**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.

The application has not demonstrated compliance with the following 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,*
- (f) *to maintain the separation between towns and villages to retain their unique character and rural and natural settings.*

The application has not demonstrated compliance with the following 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.

The application has not provided details in respect to:

- trees proposed to be removed (clause 5.9),
- extent of cut and fill proposed (clause 7.5). It is expected that the extent of earthworks will be capable of management to acceptable outcomes, subject to provision of details and consent conditions.

**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.

**PE1 - Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

The relevant general controls are assessed in the following table.

<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. Certain works appear to have been carried out without approval. Applicant will be required to seek approval for unauthorised works. Some rectification works are likely to be required.
<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 is proposed onto the adjoining Crown road reserve. Land owners’ consent required.

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 17 July 2017

**PE1 - Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

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

**1.3.5 THE REGULATIONS**

The Environmental Planning and Assessment Regulation 2000 (the Regulations) defines the proposed additional self care units as BASIX affected development.

Under clause 50, and clause 2A of Schedule 1, of the Regulations, an application for BASIX affected development must be accompanied by a BASIX certificate.

The application did not include a BASIX certificate. An application cannot be determined without a BASIX Certificate.

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 17 July 2017

**PE1 - Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**1.4 Impact of the Development**

Head of Consideration	Comment
Natural Environment	No significant impact. Some tree loss likely, however, the trees are of streetscape and visual value not ecological value.
Built Environment	Proposed setbacks and character of the development are inconsistent with the locality and the zone.
Social Impacts	The development will increase the demand on services and facilities. A condition under Section 94 cannot be applied to the proposed development consent under section 96. The development will have a significant impact on the provision of services and facilities proposed to be provided under the adopted Development Contributions Plan 2011.
Economic Impacts	The development will generate additional population that will contribute to the local economy. The proposal will 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.

**1.5 Suitability of the Site**

The site is already developed for Seniors Housing. Subject to appropriate design, layout and siting, and demonstration of the availability of suitable access to services and facilities, the site may be suitable for the development.

There will be a limit to the amount of increase in the density of development and number of dwellings that is suitable for the site. An additional 20 dwellings, as proposed, has not been demonstrated to be suitable for the site.

Planning & Economy



**PE1 - Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**1.6 Submissions**

The application was advertised from 21 September 2016 until 7 October 2016 in accordance with Council's adopted notification requirements. Five (5) submissions were received.

Below is a summary of the issues and comments.

Concern	Comment
Impact of additional dwellings on stormwater flows downstream	The application included a concept revise drainage plan to address stormwater flows from the additional development. It is noted that the proposal includes works within the adjoining Crown road reserve.
<p>Objection from residents to:</p> <ul style="list-style-type: none"> <li>▪ Not being advised of the proposed relocation of the pool, and</li> <li>▪ Consider the pool should remain adjacent the community hall which would provide better functional use of the facilities, and</li> <li>▪ New pool does not meet the access requirement for a retirement village, does not include change rooms or shower facilities, and</li> <li>▪ Green space should be maintained and not used for proposed pool and caravan parking.</li> </ul>	<ul style="list-style-type: none"> <li>▪ It is considered that the management board of the Village would be the appropriate form for residents to inform the developer of their objections.</li> <li>▪ Functionally, it is considered co-location of the Community Hall and Swimming Pool would provide a better service to residents.</li> <li>▪ The application provides no details of how the pool will comply with the access requirements under the Seniors Living SEPP,</li> <li>▪ The application does not provide details on compliance with minimum landscaped areas and deep soil zones required under the SEPP.</li> </ul>

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 17 July 2017

**PE1 - Application to Modify Development Consent No. 010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**1.7 THE PUBLIC INTEREST**

In general terms, the public interest would not be served if the development was approved because:

- The development is not substantially the same and approval under section 96 would be contrary to the provisions of the legislation,
- The development is likely to be contrary to adopted state policies and approval would avoid compliance with the aims of those policies,
- The development will increase the demand for local services and facilities without contributing towards the provision of those services and facilities.
- Council is unable to assess whether the development is consistent with Development Control Plan 2016, which contains community endorsed controls for development proposals.

**FINANCIAL IMPLICATIONS**

Development contributions apply to Seniors Housing development under Wollondilly Development Contributions Plan 2011. The existing development consent does not include a consent condition requiring section 94 contributions.

Legal precedent exists that prevent the attachment of section 94 conditions under a section 96 modification application. If the development was submitted as a fresh development application, contributions would be payable.

It is noted that some drainage structures have been constructed within the Crown road reserve. This may result in the NSW Department of Industry - Lands (formerly Crown Lands Office) transferring ownership of the Crown road reserve to Council. This outcome will have potential financial impacts on Council, in terms of management of the land and expectations that Council will construct the road.

**ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET**

1. Plans submitted with modification application.
2. Original consent site plan.

**PE1 - Application to Modify Development Consent No.  
010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

**RECOMMENDATION**

That the application be refused for the following reasons:

1. The proposed development cannot be considered under section 96(2) of the Act because it is not substantially the same development for the following reasons:
  - (a) The development description specifies 111 self care units and onsite wastewater management system as key components of the development,
  - (b) The development description no longer completely describes the development due to a previous modification which deleted the conditions relating to the installation of the onsite wastewater management system,
  - (c) Quantitative changes are proposed that will result in an 18% increase in the total number of dwellings, a 29.6% increase in the number of bedrooms, a 30.3% increase in gross floor space, and a 40.1% increase in garages, when compared with the original consent,
  - (d) There have been significant changes to the context of the circumstances that existed at the time development consent was granted, including connection of the site to a reticulated sewerage system, increase in population growth locally, modifications to the Seniors Living SEPP, commencement of the BASIX SEPP, change to the zoning, and the adoption of a Contributions Plan by Council,
  - (e) Qualitative changes to the development are proposed, including the description of the development, the available site area for development and the type, size and style of self contained dwellings.
2. The submitted plans are insufficient to enable a proper assessment of the proposed development under section 79C(1) of the Act.
3. The application does not demonstrate that the development, as modified, will comply with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
4. The proposed new dwellings as BASIX affected development and the application was not accompanied by a BASIX Certificate as required by the Environmental Planning and Assessment Regulation 2000.

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010.2005.00051506.005 – 20 Brundah Road, Thirlmere**

5. The application has not demonstrated that the development is:
  - (a) consistent with the objectives of Wollondilly Local Environmental Plan 2011 (LEP 2011), in respect to:
    - (i) The provision of adequate facilities and services,
    - (ii) The retention of the unique character of the village and the rural and natural setting,
  - (b) consistent with the zone objectives in respect to:
    - (i) requiring development to not unreasonably increase the demand for public services or public facilities, or
    - (ii) minimising the conflict between land uses.
6. The application did not include details in respect to:
  - (a) The trees proposed to be removed which require consent under clause 5.9 of LEP 2011,
  - (b) The extent of earthworks proposed to enable assessment under clause 7.5 of LEP 2011.
7. Proposed facilities for the disposal of stormwater from the site will extend onto the adjoining Crown road reserve and the land owner's consent was not submitted for these works.
8. Proposed setbacks to Brundah Road and to the eastern side boundary are inconsistent with the character of the locality and the zone.
9. The development will increase the demand on local services and facilities. A consent condition requiring Development Contributions cannot be applied to the proposed development consent under section 96. Consequently, the development will have a significant impact on the provision of services and facilities that are proposed to be provided under the adopted Contributions Plan.
10. The applicant has not demonstrated that the site is suitable for the proposed development as required by section 79C of the Act.