



No 160 Lakemba Street, Lakemba
Internal additions to existing building
and fitout/use as a medical centre with
associated hydrotherapy pool
(DA 54/2014)

Submitted to
Canterbury Bankstown Council

SECTION 4.55 (1A) MODIFICATION

Statement of Environmental Effects

Date: 17 October 2022
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I. Introduction & Background

This Planning Statement has been submitted to Canterbury Bankstown Council in support of a modification application made under Section 4.55 (1A) of the Environmental Planning & Assessment Act 1979. This modification seeks consent for minor alterations to the approved development comprising retention of floor area at the rear of the existing building (previously proposed to be demolished), modification to internal configuration of the office and treatment rooms, modified roof to primary treatment building, modified parking area, relocation of rain water tanks and additional area to pool pump room at 160 Lakemba St, Lakemba.

The site has previously been granted development consent (DA 54/2014 issued 12 February 2015) and works have commenced on site. Construction work was subsequently ceased as the roofline under construction did not conform with the issued consent. A subsequent application to modify the consent to allow the roofline revision was refused by Council (DA 910/2022 issued 3 February 2022)). This current application now seeks a minor roofline modification more in keeping with the original grant of consent and to address issues raised in refusal of the previous application.

The purpose of this report is to describe the proposed amendments, review the applicable planning regime relating to the proposal, assess the degree of compliance and examine the environmental effects of the development when measured against the relevant requirements of the Environmental Planning and Assessment Act, 1979.

The application has been prepared taking into account the following key issues:

- Legislative requirements relating to the modification of a consent;
- Compliance with environmental planning instruments;
- Possible environmental impacts; and
- The public interest.

This report has been prepared in association with a series of architectural plans prepared by *RK Designs - Architects*.

In summary, it is considered that the proposed modifications result in substantially the same development and do not result in adverse environmental impacts materially over and above that which were originally approved by Council.

2. Site Analysis and Context

The site is formally described as Lot A DP 329928 and is located at 160 Lakemba Street, Lakemba. The block of land is approximately 934sqm in site area and faces north on Lakemba Street.

A single storey building exists on the property. There is a vehicle crossing on Lakemba Street and a driveway runs along western boundary of the site that leads into concrete area used for onsite car parking. The subject property is occupied as a physiotherapy practice in the daytime.

Figure 1 – Aerial of the subject site Source: mecone



Figure 2: Locality map Source: six.nsw.gov.au



To the immediate East of the subject property, at the corner of Lakemba Street and Quigg Street North, an Anglican church exists. To the immediate West of the subject property, at the corner of Lakemba Street and Haldon Street, a petrol station exists.

The site is juxtaposed between an existing church and the commercial centre with the immediately adjoining site having an approval for a large multi storey mixed use development.

Despite the subject site being zoned Residential it lies within a streetscape that is highly commercialised in terms of scale and character and has no immediately adjoining residential neighbours.

3. The Proposed Modifications

3.1 Planning History and Consent to be modified

Development Consent DA 54/2014 was granted on 15 February 2015 for internal additions to existing building and fitout/use as a medical centre with associated hydrotherapy pool. That consent has been activated and construction commenced.

3.2 Proposed Modifications

The application seeks consent for a modification of the approved development and consequent amendment of related conditions of consent. An extract of the approved plans and the proposed plan amendments and description of the amendments are as shown in detail in the submitted architectural set and generally include the following modifications:

- **Retention of the caretaker residence at the rear of the treatment rooms and conversion of the space to office kitchen facilities and disabled bathroom and reconfiguration of proposed treatment rooms, corridor access and reception/waiting room.**

The original approval proposed demolition of the existing caretaker residence and storage on site and use of the that area of the site for additional car parking.

The modification proposes an internal reconfiguration of the approved treatment rooms, waiting area and reception to reduce the access corridor/waiting area and add minor floor area to the treatment rooms. The disabled toilet and staff facilities are proposed to be relocated to the rear of the building in the area previously approved to be demolished.

The proposed modification retains the number of treatment rooms at 4 and provides a convenient and compliant access to the disabled toilet area and staff facilities. Further discussion on carparking provision is provided below.

- **Proposed extension of gable pitched roof line over additional floor area at the rear of the treatment rooms and the front porch, the roof to be metal finish, not tile roof as approved, a minor lifting of the roof ridge line and proposed water feature to the rear elevation of extended treatment rooms and facilities.**

The original approval proposed retention of the gable pitched, tile roof over the primary treatment rooms and extension of the tiled and hipped roof over the rear. The modification proposes an extension of the gable pitch over the proposed additional floor area to the rear and over the front porch and for the roof material to be metal, not tile. The overall roof ridge height and perimeter wall heights are

also proposed to be lifted with a revised ridge height of RL 41.31. A water feature is also proposed on the rear elevation.

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- **Enlarged enclosed pump room space and relocation of rainwater tanks.**

The original approval had a small pump room located adjacent to the ramp and stair access to the pool. The pump room has been required to be increased in area and is in a fully enclosed space adjacent to the ramp access. Rainwater tanks were originally approved within the pool room and are proposed to be relocated to the side boundary adjacent to Treatment Room 1.

- **Revision of proposed parking spaces.**

The original approval proposed 9 car spaces including a disabled space. The granted consent at Condition 9 requires no more than 7 car spaces to be provided and a number of affiliated requirements on car space and access aisle dimensions.

The modification proposes provision of 5 car spaces that have been designed to allow easy ingress and egress from the site in a forward direction and also allow for occasional delivery or safe turnaround of vehicles.

Further discussion of the proposed parking provision is provided in Section 5 of this report.

Conditions of Consent

The following Conditions of the consent require modification as a result of plan title amendment, or revised detail that modifies the need or nature of the condition.

Condition 4 - Plan references.

Condition 9 - Carparking requirements.

4. Environmental Planning Assessment

4.1 Section 4.55 of the EP&A Act 1979 – Modification of consents

Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979 (the Act) address modifications and provides that Council may modify a consent where:

1A) Modifications involving minimal environmental impact

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) 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*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, 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.*

And

- (3) 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 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In response to the above criteria it is noted that:

- The development proposes the same land use as approved by Council in DA 54/2014;
- The application may be neighbour notified in accordance with the provisions of Council's DCP;
- The consent authority is responsible for considering any submissions if raised;
- A Section 4.15 Assessment of the modifications forms part of this Statement. The consent authority must take into consideration these matters where they are of relevance.

Further detail is provided having regard to the requirements of 4.55(1A) below:

S.4.55 1A (a) requires that Council must be satisfied that - *the proposed modification is of minimal environmental impact.*

In that regard the nature and intensity of the use has not been altered with the number of treatment rooms as approved being unaltered, the operation times being unaltered and the general form and streetscape presentation of the development being generally maintained as approved with a minor projection of the roof form over the front porch and the overall roof form being raised in height. There are no off site overshadowing or amenity impacts that are altered by the modification and Council can therefore be satisfied the proposed amendment is of minimal environmental impact and can be assessed under this provision.

S.4.55 1A (b) requires that Council must be 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),*

In that regard Pearlman C.J., in *Schroders Australian Property Management Ltd v Shoalhaven City Council and Anor (1999) NSWLEC 251*, held “substantially the same development” to mean “essentially or materially or having the same essence”. It is contended that the development, as modified, would essentially and materially have the same essence being use as a medical centre with associated hydrotherapy pool. In addition, it is noted that during the proceedings of *Tipalea Watson Pty Ltd v Ku-ring-gai Council (NSWLEC 253) 2003* “substantially the same development” had the meaning of “essential characteristics” of the approved development. In addition, during the Court proceedings of *Moto Projects (No. 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298*, Bignold, J held that: -

“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (current) approved development.”

The proposed amendments will ‘**not**’ result in any of the following: -

- Significant change to the nature or intensity of the use;
- Significant change to the relationship to adjoining properties;
- Any additional adverse impact on neighbours from the changes (overshadowing; visual and acoustic privacy; traffic generation, etc);
- Significant change to streetscape; and
- Significant change to the scale or character of the development.

Having regard to the above it is considered that the proposed modifications do not change the essential features of the approved development and do not substantially alter the approved built form or use of the site.

Quantitative impact

The proposed modifications do not result in any meaningful additional quantitative impacts. The primary building setbacks, existing built area footprint, scale and character and the general detailing of the building finishes and fenestration remain substantially similar to the approved building. There is also little change to the intensity of use of the site or vehicular traffic generated by the proposed change.

It is therefore considered that the modification results in substantially the same development as approved by the Council in DA 54/2014.

The following section describes the proposed development's compliance with any relevant statutory and non-statutory policy and addresses the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

4.2 State Environmental Planning Policies

4.2.1 SEPP (Resilience and Hazards) 2021

Chapter 4 of the SEPP relates to remediation of land and requirements for potential site contamination to be considered in the assessment process.

The site has been used for commercial purposes for many years and no known significant contaminating activities have occurred on the site and this issue was considered in the original grant of approval.

The proposed amendments do not alter any aspect of the approved development in relation to this consideration and the requirements of the SEPP are considered satisfied.

4.2.3 SEPP (Biodiversity and Conservation) 2021

Chapter 2 of the SEPP regulates the clearing of native vegetation on non-rural land and applies in Canterbury Bankstown and requires Council approval for clearing of vegetation where identified in a development control plan to be vegetation to which the SEPP applies.

The original application does not propose to remove any trees and the proposed amendments do not alter any aspect of the approved development in relation to this consideration and the requirements of Chapter 2 of the SEPP are therefore considered satisfied.

Chapter 11 of the SEPP applies to the Georges River Catchment and the plan provisions are stated as applying in the Canterbury local government area.

The aims of the Plan are, among other things, to maintain and improve water quality and river flows of the Georges River and its tributaries and to protect and enhance the environmental quality of the Catchment. The subject site is not identified as being in the Georges River Catchment and suitable conditions of consent have been applied to the original grant of approval to ensure the proposed development will have no significant adverse impact on the water quality locally.

The proposed amendments do not alter any aspect of the approved development in relation to this consideration and the requirements of Chapter 11 of the SEPP are considered satisfied.

4.3 Local Planning Instrument

4.3.1 Canterbury Local Environmental Plan 2012

The Canterbury Local Environmental Plan 2012 (CLEP 2012) applies to the subject site which is identified as being within Zone R4 – High Density Residential.

The requirements of the Canterbury City Council, the Canterbury Local Environmental Plan and the subject proposal's compliance with the Development Control Plan are outlined as follows:

ZONE R4 HIGH DENSITY RESIDENTIAL

Objectives of zone

To provide for the housing needs of the community within a high density residential environment.

To provide a variety of housing types within a high density residential environment.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The site was previously approved to be used as a medical centre - (DA-54/2014). The use satisfies the zone objective of allowing facilities or services that meet the day to day needs of residents. The subject site as a medical centre facility is beneficial for the existing and desired commercial future of Lakemba town centre. This premium health care facility in the Lakemba Business Hub, will provide local residents with a complementary health facility to the existing

high level of medical service provided in the centre including the hydrotherapy facility, equipped with an array of rehabilitation apparatus, and features that are very specialised and are a true asset to the Canterbury - Bankstown municipality.

Following is an assessment against the relevantly applicable provisions of the CLEP 2012:

Canterbury Local Environmental Plan 2012			
CL	Requirement	Proposed	Y/N
Part 4 – Principal Development Standards			
4.3	Height of Buildings The development is subject to the provisions of Clause 4.4 (2), which as indicated on the associated “Height of Buildings” Map, limits the height of buildings to 11.5m.	The modification proposes a minor change to the maximum height of the approved building but which lies well within that permitted at 6.9m.	Y
4.4	Floor Space Ratio Clause 4.4A (2) permits a maximum FSR of 0.75:1 for the subject site of 934m ² equating to a permissible floor area of 700m ² .	The proposal modification slightly increases the FSR from the approved gross floor area to 407m ² (0.435:1)	Y

There are no other relevantly applicable LEP provisions.

5. Canterbury Development Control Plan 2012

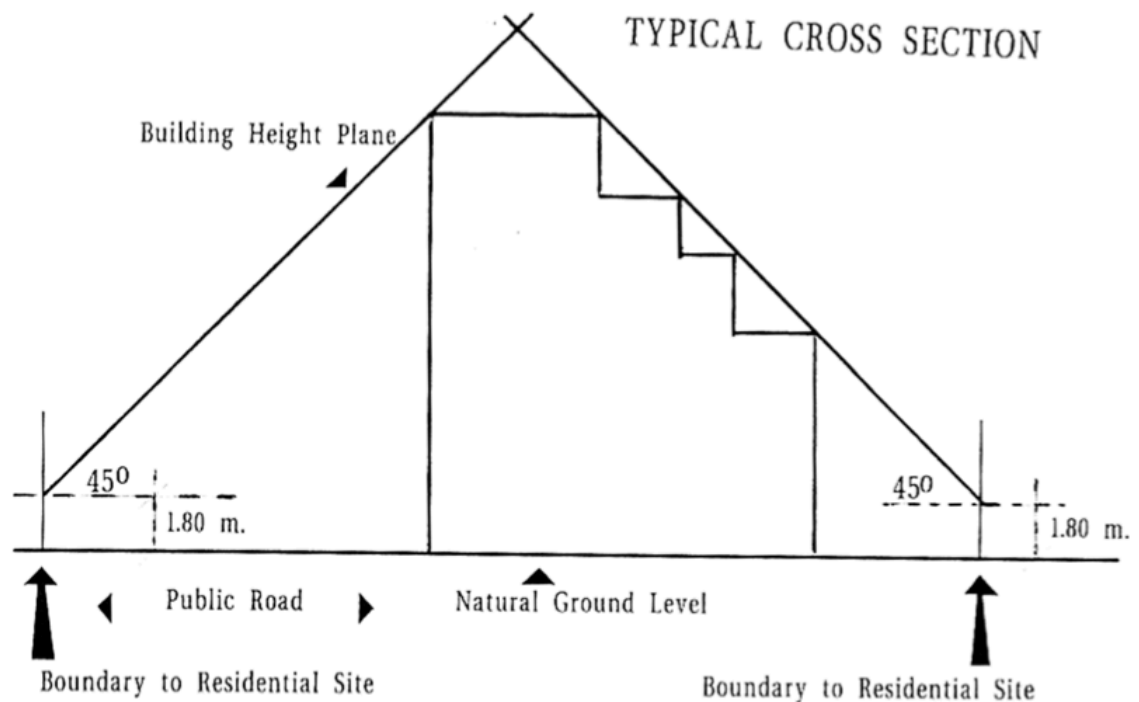
The proposal is for a non residential use in a residential zone and the provisions of Part F8 are relevantly applicable provisions in the DCP. The General Objective of those provision are to reduce unreasonable amenity impacts on surrounding residents caused by the non-residential use. The general controls at F8.2 note assessment of possible impact on residential amenity through noise, parking demand, and through traffic generation, hours of use and building scale.

The site has an existing approval for the non residential use of the site and these considerations have previously been satisfied and this assessment is therefore constrained to assessment of the impact of the proposed modifications only on surrounding residents.

In general terms the minor reconfiguration of floor areas and extended gable roof form to the streetfront and over the retained building footprint at the rear are considered to provide a

building design compatible with the adjoining residential character and generally consistent^D with that approved.

The diagram at Figure F8.1 in the DCP is not considered relevant to the nature of the proposal and would be generally applicable to a multi storey development with a road frontage (as noted in the diagram) however the proposal complies with the building envelope along the south-western boundary and has a minor eave projection into the building plane along the north-eastern.



Car Parking.

The original Council Officer's development assessment considered that the provision of 1 car space per 60m² of floor area was appropriate for the use having regard to the location of the site adjacent to the Lakemba commercial centre. The approved use included 4 treatment rooms, ancillary reception/waiting and toilet facilities and the affiliated pool and spa building, which is used in conjunction with the treatment rooms to provide rehabilitation and guided exercise.

The modification proposes minor internal alteration to the floor area provided to each of the 4 treatment rooms (through narrowing the hallway) and reconfiguration and relocation of waiting area, reception and staff facilities and disabled toilets to the rear. These modifications do not significantly alter the traffic generating capacity of the development. The number of treatment rooms is maintained and the other modifications generally provide an ancillary role to those treatment rooms and do not generate any additional use in their own right.

The original assessment also included the area of the pool within the rear building as “floor area” . The whole nature of the activity on this site is the use of the pool area and related facilities in conjunction with the treatment rooms, particularly having regard to the Development Consent conditional requirement that the hydrotherapy pool can only be used as an adjunct facility to the approved treatment rooms. Those facilities do not lead to intensified use of the site in their own right with primary visitation to the site driven by the 4 treatment rooms.

The total proposed usable floor area (discounting the area of the hydrotherapy pool itself) of the whole site is 330m². At a rate of 1 space/60m² this would require provision of 5.5 spaces where 5 spaces and a dedicated turning bay/delivery space, with adjacent disabled space, is proposed. This is considered reasonable and appropriate for the nature and intensity of the use.

Development Control Plan provisions are not statutory requirements and are intended to provide ‘guidance’ for development that is permissible. In this regard, it should be noted that Section 4.15 (3A) of the Environmental Planning and Assessment Act 1979 emphasises that where a development does not comply with the standards of a DCP, a consent authority is obliged to ‘be flexible in applying those provisions’ and to ‘allow reasonable alternative solutions’ that achieve the objectives of those standards.

In that regard the proposed modifications are considered to satisfy the objectives and standards of the DCP with regard to the provision of a non – residential use in a residential area and the proposed parking provides for the anticipated level of visitation to the site in a safe and efficient manner that allows for adequate on site manoeuvring. On that basis it is requested that the modifications be accepted.

Assessment of Natural Environmental Impact – S4.15(1)(b)

The site has no inherent natural scenic qualities and forms part of the general townscape of Lakemba centre when viewed from surrounding localities and in passing. The proposal will not result in any change to the general character of the area and is not considered to generate any adverse topographical or scenic impacts or result in the loss of vegetation. The proposed development is considered unlikely to result in any adverse effects on the locality in terms of impact on water and air quality nor likely to generate any adverse environmental impacts.

Assessment of Built Environmental Impact – S4.15(1)(b)

Acoustic and Visual Impact

It is considered that there are not likely to be adverse acoustic impacts on adjacent sites and within the development. The site is adjacent to a commercial precinct and a long standing church use and is sited on a main road where there is a general background level of noise that impacts on existing local amenity. The proposed modifications are not considered to generate any additional noise levels from the site nor present any impact on visual amenity in the locality.

Social and Economic Impact

Approval of the proposed modifications is considered to provide a positive local social and economic impact, allowing the approved works to the Medical Centre to be completed and providing ongoing local employment and underlying support for visitation to the Centre and other nearby commercial enterprises. The social and economic impacts of the proposal are considered to be positive.

Assessment of Site Suitability – S4.15(1)(c)

It is considered that the proposed development is of a nature and intensity that is suitable for the site having regard to its relationship to adjoining developments and the scale, form and nature of the proposed development. The site is not in an area recognised by Council as being subject to any hazards that would preclude the development from occurring and has previously been approved by Council.

Traffic, Parking and Access

The existing approved vehicular site access is maintained and there is no intensification of the use of the site. Proposed parking on site is designed to meet Australian Standards and is considered sufficient to meet demand for parking having regard to the location adjacent to a commercial centre and the nature of the activity on the site.

Public Interest – S4.15(1)(e)

The proposed development is of a scale and character that does not present any conflict with the public interest nor present an unacceptable precedent for development in the locality. This location is suited to this nature of development and the proposal will not have any significant adverse impact on adjoining properties. The proposal is well placed to satisfy demand for local health services and is considered to be in the public interest.

6.0 CONCLUSION

The current modification application proposes a number of minor modifications to the approved development that have generally arisen as a consequence of unforeseen complications during the construction phase and present a roof form more consistent with the adjacent church and the general character of the locality roof than that which was existing through emergency roof reconstruction.

The modifications do propose additional floorspace by retention of the rear of the existing premises that were previously identified for demolition however the reconfiguration of the internal spaces does not give rise to any increase in the intensity of use of the approved medical facility and provides a finished presentation to the facade that is generally consistent with the scale and character of the local context.

The proposed development has been assessed having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 and the relevantly applicable provisions of CLEP 2012 and CDCP 2012 having regard to the nature of the application.

Approval of the proposed modifications will assist in allowing completion of works and allow ongoing use of the site as a valuable medical facility for local residents.

On that basis the proposed modifications are recommended for Council support.

