

NORTHERN BEACHES COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-104
DA Number	Mod2020/0256
LGA	Northern Beaches Council
Proposed Development	Modification of Development Consent DA2017/0237 granted for demolition of existing structures excavation and site works and construction of a Residential Aged Care Facility
Street Address	Lot 8 DP 737255, 51 Childs Circuit, Belrose (Previously known as 169 Forest Way, Belrose)
Applicant/Owner	Japara Property Holdings Pty Ltd (Owner) Thomson Adsett (NSW) Pty Ltd (Applicant)
Date of DA lodgement	17 June 2020
Number of Submissions	Application not required to be notified under Community Participation Plan
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Modification application for regionally significant development under Section 4.56 of the EP&A Act.
List of all relevant s4.15(1)(a) matters	• Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • Warringah Local Environmental Plan 2000
List all documents submitted with this report for the Panel's consideration	Attachment 1 – Modified Draft Conditions
Clause 4.6 requests	Not Applicable
Summary of key submissions	No Issues
Report prepared by	Lashta Haidari –Principal Planner
Report date	12 August 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

**Not
Applicable**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Not
Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**Not
Applicable**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

The proposal seeks to modify Development Consent No.DA2017/0237 issued by the Land and Environment Court (LEC) on 17 December 2018 for demolition works excavation and site works, and construction of a Residential Aged Care Facility on site known as 51 Childs Circuit, Belrose (Previously known as 169 Forest Way, Belrose).

The Sydney North Planning Panel (SNPP) refused the application DA2017/0237 on that basis that the proposal was an overdevelopment of the site and inconsistent with the number requirements of Warringah LEP 2000. The proposal before the SNPP panel consisted of a 120 bed residential care facility, however as part of the Court proceedings, the application was amended to reduce the number of beds to 104 and also reduced the size and scale of the built form of the development.

The proposed modification seeks to amend conditions 50, 51, 54, 55, and 57 of DA2017/0237, to delete references to “**interim/final**” in these conditions as they relate to the release of an Occupation Certificate. The proposed amendments to delete these references is consistent with changes made to the Part 6 of the Environmental Planning and Assessment Act 1979 (EP&A Act), which were made on 1 December 2019.

Accordingly, this report recommends that approval be granted to this application in accordance with the amended conditions provided in Attachment 1.

PROPOSED DEVELOPMENT IN DETAIL

The application involves the modification of Development Consent No. DA2017/0237 in the following manner:

- Modify Conditions No. 50, 51, 54, 55, and 57 to delete the reference to “ *interim/final*” as they relate to the release of an occupation certificate. The conditions to be modified are shown with a red strike through:

50. Registration of Encumbrances for On-site Stormwater Detention

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any ~~interim / final~~ Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF02)

51. Restriction as to User for On-site Stormwater Detention

A Restriction as to User shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any ~~interim / final~~ Occupation Certificate.

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

54. Positive Covenant for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any ~~interim / final~~ Occupation Certificate.

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)

55. Creation of Positive Covenant and Restriction as a User

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Northern Beaches Council for authorisation.

A certified copy of the documents shall be provided to Council after final approval and registration has been affected by the "Department of Lands".

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an ~~Interim / Final~~ Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF14)

57. Positive Covenant for Stormwater Quality Devices

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater quality devices. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands.

The Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of ~~any interim/final~~ Occupation Certificate.

Reason: To ensure ongoing maintenance of the stormwater quality system

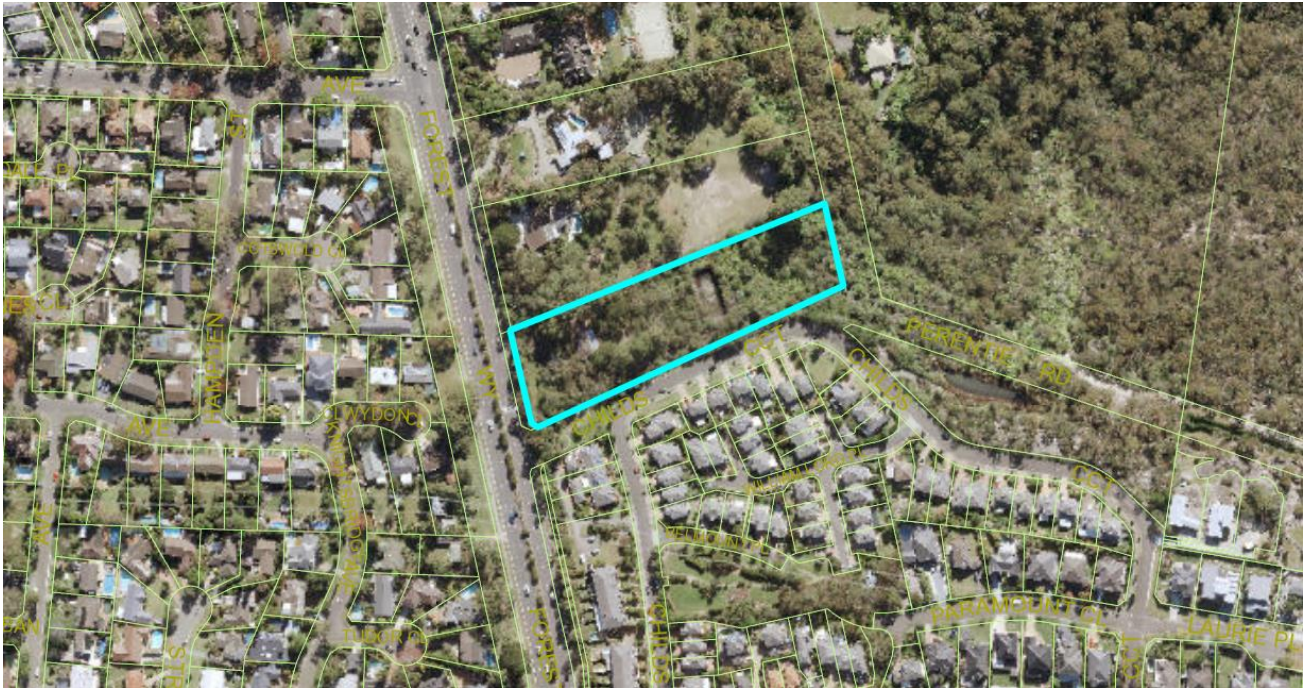
ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the Associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SITE DESCRIPTION

The site is Lot 8 DP 737255, 51 Childs Circuit, Belrose (previously known as 169 Forest Way, Belrose) and is located on the eastern side of Forest Way. It has two street frontages, one to Forest Way and one to Childs Circuit as can be seen in the map below.



Site Map

Presently, the upper portion of the site is the subject of construction, whilst the remainder of the property is bushland on the lower slope of the site.

The site is within the B2 Oxford Falls Valley locality under the WLEP 2000 which generally allows residential and other urban and non-urban land uses, whilst seeking to preserve the ecological context of the surrounding environmentally sensitive land.

Surrounding development consists of low-density residential properties to the north and across Forest Way to the west. Childs Crescent is parallel to the southern boundary with medium density residential properties located beyond. Dense bushland is located to the east of the site.

RELEVANT BACKGROUND

Development Application No. DA2017/0237

Development Application DA2017/0237 for the demolition of the existing structures and construction of a 104 room residential care facility and ancillary facilities works was granted Development Consent by the Land and Environment Court on 1 December 2018.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;

- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal.

SECTION 4.56 CONSIDERATIONS (previously Section 96AA)

In accordance with Section 4.56, 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:

(a) Section 4.56 1(a) – Substantially the same development

The proposed modification seeks to modify the wording of selected conditions of consent only. No other changes are proposed as part of this modification, therefore the proposed modification is found to be consistent with the requirement of Section 4.56 of the EPA Act.

Therefore, the development as proposed to be modified will remain substantially the same as that approved.

b) Notification and Section 4.56 1(b) - (d)

As the modification relates to modifying the wording of conditions only, the application did not require notification.

Section 4.15 Assessment

In accordance with Section 4.55(3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55, the consent authority must take into consideration such of the matters referred to in section 4.15 as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Not Applicable
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2000 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None Applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	All relevant provisions of the EP&A Regulation 2000 have been taken into consideration during the assessment of the DA and this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment remain unchanged. (ii) & (iii) The social and economic impacts of the proposed development will remain unchanged
Section 4.15 (1) (c) – the suitability of the site for the development	The site’s suitability for the development remains unchanged.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See the discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	The modified development remains in the public interest

BUSHFIRE PRONE LAND

The site is located within Bushfire, however no changes are proposed to the built form or the general terms of approval as issued by NSWRFs in the original application.

NOTIFICATION & SUBMISSIONS RECEIVED

The application was required to be notified as per the Community Participation Plan.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)

All Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions, which the proposal is considered acceptable against the applicable planning controls.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

LOCAL ENVIRONMENTAL PLANS

Warringah Local Environment Plan 2000 (WLEP 2000)

WLEP 2000 applies to the subject land and the subject site is within the B2 Oxford Falls Valley Locality.

As the proposed modification relates to minor amendment to conditions of consent, there are no changes proposed that will alter compliance or consistency of the approved development with the planning controls under WLEP 2000.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The amendments will not result in any changes to the impact of the development on threatened species, populations or ecological communities or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)

The amendments will not result in any changes to proposals consistency with the principles of Crime Prevention through Environmental Design.

CONCLUSION

The proposal has been assessed in accordance with Section 4.56 and the heads of consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) and is considered satisfactory.

The application has been assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000

In accordance with Part 3 of Schedule 2 of the EP&A Act, the Application is referred to the Sydney North Planning Panel for determination.

The S4.56 application before the Panel seeks to modify Development Consent No. DA2017/0237 as described in this report. The proposed modifications relate to conditions of consent only and do not alter the proposal in any material way, such that it is substantially the same development as that originally approved.

Accordingly, it is recommended that approval be granted to the modification application subject to the amended conditions detailed in Attachment 1.

RECOMMENDATION (APPROVAL)

That the Sydney North Planning Panel (SNPP) as the consent authority grant approval to Modification Application No. Mod2020/0256 for Modification of Development Consent DA2017/0237 granted for demolition of existing structures, excavation and site works and construction of a Residential Aged Care Facility, at Lot 8 DP 737255, 51 Childs Circuit, Belrose, subject to the modified conditions contained in Attachment 1.