

NORTHERN BEACHES COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-154
DA Number	Mod2020/0424
LGA	Northern Beaches Council
Proposed Development	Modification of Development Consent DA2017/0237 granted for demolition of existing structures, excavation, 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) Brendan Patrick Francis McNally (Owner) Adrienne Elizabeth McNally (Owner) Thomson Adsett (NSW) Pty Ltd (Applicant)
Date of DA lodgement	18 September 2020
Number of Submissions	Nil
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 – Architectural Plans (as amended) Attachment 2 - Modified Draft Conditions
Clause 4.6 requests	Not Applicable
Summary of key submissions	No Issues
Report prepared by	Lashta Haidari –Principal Planner
Report date	25 November 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 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 consent was granted by the Land and Environment Court (LEC) on 17 December 2018.

The development application was refused by the Sydney North Planning Panel (SNPP) on that basis that the proposal was an overdevelopment of the site and inconsistent with a number of requirements under Warringah Local Environmental Plan 2000. The original application was for 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 it also reduced the physical size and scale of the development.

This Section 4.56 Application seeks to rationalise the approved scheme compromising the original design concept, and includes a minor changes to the approved elevations and window sizes. The modifications proposed are minor and remain consistent with the relevant planning controls which apply to the site.

The overall use on the site, being for a residential aged care facility and the built form of the approved development remains unchanged. The proposed development has been assessed against the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, including likely impacts, the suitability of the site for the development and the public interest. The proposed development as modified remains as a suitable and appropriate development for the site.

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 (as stipulated within statement of modifications, prepared by the architects, Thomson Adsett):

- Glazing line along eastern boundary push out to align with approved window framing in order to allow for a window box. This is to provide additional amenity to the residents of the rooms along this elevation.
- Revised window sizes – this is mainly due to minor changes in internal layout, and in order to allow for necessary furniture elements within some of the internal spaces.
- Roof extent reduced in part

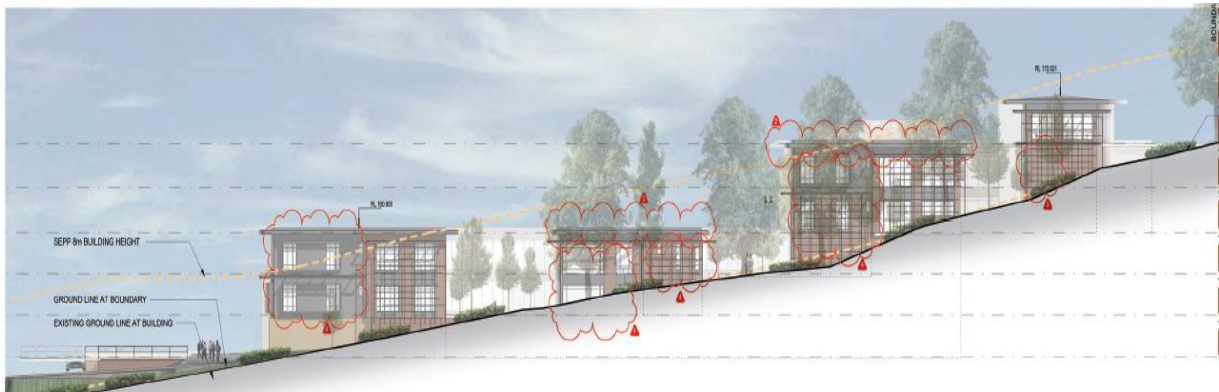


Figure 1: North Elevation, showing modified window scheme (source: Architectural Plans, prepared Thomson Adsett)

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) 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.

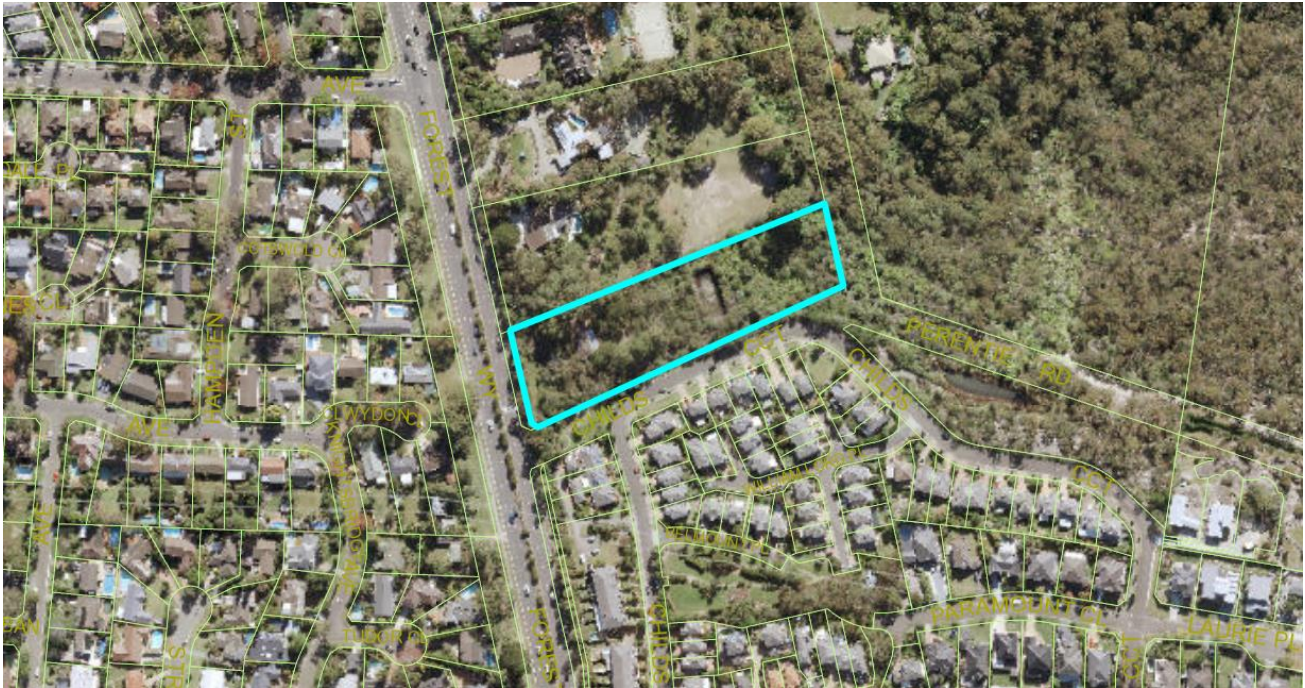


Figure 2 : Site Map

Presently, the upper portion of the site is the subject of construction, whilst the remainder of the property is relatively undisturbed 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 on the basis of an amended proposal that:

- Reduced the number of rooms from 120 to 104;
- Increased the front setbacks to Forest Way (from 8m to 14m) and Childs Circuit (from 6m to 10m);
- Increased the depth of the courtyard to 30-36m
- Modified the build form to provide 4 pavilions around the courtyard and linked the transparent (glazed) links
- Reduced the overall building height by 600mm
- Reduced the number of car parking spaces by 2 (from 34 to 32) with the deletion of 2 underground spaces
- Increased the area of the coastal upland swamp in accordance with the map information
- Introduced 6 parking on the driveway to offset the reduction of 6 spaces to the on grade parking area due to the re-mapping of the coastal upland swamp

- Reduced the quantum of excavation by 4,600m², from 14,700m² to 10,100m²
- Relocated the lift core further east to further reduce excavation
- Added an activity room to level 4 with internal lift access and a level pedestrian access to Forest Way
- Reduced the extent of the landscaped roof.

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 will result in a development that is substantially the same as that previously approved by the Land and Environment Court. The modifications requested are considered to be minor and will not compromise the original approved design or use, the changes will not be discernible externally and have been adjusted in detail to ensure that the functionality of the use is not compromised.

Consequently, it is concluded that the development as proposed to be modified will remain substantially the same as that approved.

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

Council have notified the application as lodged in accordance with the Northern Beaches Community Participation Plan. No submission were received in response to the notification process.

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 4.56, 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)(iiiia) – 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 (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 amendments are considered to be in the public interest as it is consistent with the relevant planning controls. Assessment of this application has not identified any significant compliance issues, unresolved matters or amenity impacts for adjoining development, which would warrant further design amendments or refusal of the application. The modified development will remain in the public interest

BUSHFIRE PRONE LAND

The site is located within a Bushfire Prone Area and the proposal is a Special Fire Protection Purpose and requires a Bushfire Safety Authority under S100B of the Rural Fires Act, 1997. The current application was referred to RFS and they have provided their General Terms of Approval (GTA’s). The GTA’s issued by RFS in the original application remain unchanged.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Northern Beaches Community Participation Plan.

As a result of the public exhibition of the application, Council received no submissions in relation to the amended proposal.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	There is no objection to the proposed modification subject to compliance with the previous biodiversity referrals and existing conditions of consent.
NECC (Development Engineering)	No objection to the proposed modification.

NECC (Riparian Lands and Creeks)	The modifications are not directly impacting the riparian conditions of consent dated 14 December 2018 by the Land and Environment Court. Note the proposed sewer location is upstream of the EEC swamp. All precaution should be taken to mitigate the risk of sewer overflow to the EEC. No objection to the proposed modification.
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External Referral Body	Comments
New South Wales Rural Fire Service (NSW RFS)	The NSW RFS has reviewed the amended information. General Terms of Approval are now re-issued, under Division 4.8 of the <i>Environmental Planning and Assessment Act 1979</i> , and a Bush Fire Safety Authority, under section 100B of the <i>Rural Fires Act 1997</i> , are now issued subject to compliance with the General Terms of Approval of the original Bush Fire Safety Authority issued dated 22 August 2017.

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.

STATE ENVIRONMENTAL PLANNING POLICIES

State Environmental Planning Policy (Infrastructure) 2007

Clause 45

Clause 45 of the SEPP Infrastructure requires the consent authority to consider any DA (or an application for modification of consent) for any development carried out

- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);*
- Immediately adjacent to an electricity substation; or
- Within 5 metres of an overhead power line.

The amended application was referred to Ausgrid and no reply was received. However, it should be noted that the proposed modification is not seeking to alter the conditions as it relates to Ausgrid requirements imposed in the original consent

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 (SEPP 55) provides that Councils must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and/or requires remediation for the intended land use.

The assessment of the original application that the site was suitable for the proposed development and in addressing the requirement of this SEPP.

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 involves relatively minor amendments to the approved development, there are no changes proposed that will alter compliance or consistency of the approved development with the planning controls under WLEP 2000.

The proposal, as amended does alter the approved built form controls for the site and results in no adverse direct amenity impacts such as overshadowing, view loss or loss of privacy.

The external character, building bulk and external finishes remain satisfactory and consistent with the relevant requirements of the WLEP 2000.

Therefore, the proposal, as amended remains consistent with Desired Future Character for the B2 Locality and the General Principles of Development Control 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 minor elevation and window changes and do not alter the proposal in any material way, such that it is substantially the same development as that originally approved.

The proposal, as amended remains consistent with Desired Future Character for the B2 Locality and the General Principles of Development Control under WLEP 2000.

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. Mod2020/0424 for Modification of Development Consent DA2017/0237 granted for demolition of existing structures, excavation, 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.