

DATE OF DETERMINATION	24 August 2023
DATE OF PANEL DECISION	24 August 2023
DATE OF PANEL MEETING	23 August 2023
PANEL MEMBERS	Brian Kirk (Chair), Sue Francis, Nicole Gurran, Martin Smith, Kim Wheatley
APOLOGIES	Peter Debnam
DECLARATIONS OF INTEREST	Nil

Papers circulated electronically on 16 August 2023.

MATTER DETERMINED

PPSSNH-387 – KU-RING-GAI – MOD0020/23, 25 Bushlands Avenue, Gordon, Modification to Land and Environment Court Approval 14219 of 2018 (DA0418/15) for a residential aged care facility proposing additional tree removal (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered the matters listed at item 6, the material listed at item 7, the material presented at meetings and briefings, and the matters listed at item 8 in Schedule 1.

Development application

The Panel determined to approve the modification application pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979*.

The Panel's decision was unanimous.

REASONS FOR DECISION

This application is a s. 4.56 modification application to a development consent for works that had a capital investment value of more than \$30 million. The original development application (DA0418/15) was approved by the Land and Environment Court on 7 May 2019.

The modifications are for the removal of four dead or dying trees from the subject site. No physical changes to the approved built form of the development are required.

The modifications triggered entry into the Biodiversity Offset Scheme (BOS) as it is proposed to remove Tree 124 *Eucalyptus pilularis* (Blackbutt), which is located within the NSW biodiversity land values map. The Applicant submitted a biodiversity development assessment report (BDAR) prepared by an accredited assessor who applied the Biodiversity Assessment Method (the BAM) to assess the impacts of the proposed modifications. Council accepts the BDAR on ecological grounds, subject to recommended Condition 1E.

In summary, the Panel is satisfied that the modification proposal has been properly assessed against relevant planning controls, is substantially the same as the development originally approved, and will increase the supply of high quality seniors housing in the local area.

The Panel considers that the development as modified will not result in adverse impacts when compared to the approved development and it is in the community interest.

CONDITIONS

The Panel approves the modification application subject to the recommended amended and additional conditions in Council's Assessment Report. In summary, these require that suitable replacement trees be provided.

Changes to the conditions of the consent to DA0418/15 are;




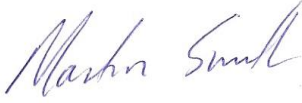

- Conditions 42C and 67 are to be amended; and
- New Conditions 1D, 1E, 19E and 42E are to be added.

The Council's Assessment Report refers to a proposed amendment of Condition 1C; however, this is not necessary with the addition of new Condition 1D.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 2 written submissions made during the public exhibition of the proposal. Issues raised included Tree removal and Development is out of character for the area.

The Panel considers concerns raised in submissions have been adequately addressed in Council's Assessment Report.

PANEL MEMBERS	
 Brian Kirk (Chair)	 Sue Francis
 Nicole Gurran	 Martin Smith
 Kim Wheatley	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-387 – KU-RING-GAI – MOD0020/23
2	PROPOSED DEVELOPMENT	Modification to Land and Environment Court Approval 14219 of 2018 (DA0418/15) for a residential aged care facility proposing additional tree removal
3	STREET ADDRESS	25 Bushlands Avenue, Gordon
4	APPLICANT/OWNER	Ada Cheng
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.56 modification

6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Environmental Planning and Assessment Regulation 2021 Biodiversity Conservation Act 2016 State Environmental Planning Policy (Biodiversity Conservation) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Housing) 2021 Ku-ring-gai Local Environmental Plan, 2015 (KLEP) Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Ku-ring-gai Development Control Plan Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Coastal zone management plan: Nil Other relevant plans: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report with draft conditions of consent. Attachment A - Location sketch Attachment B -Zoning Extract Attachment C - Scope of modifications letter dated 10 February 2023) Attachment D - Site Landscape plan contained within Attachment E Attachment E – Arborist report dated 10 February 2023 Attachment F - Biodiversity Development Assessment Report dated May 2023 Attachment G - Submissions Written submissions during public exhibition: 2
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> 28 June 2023 – Kick off briefing 23 August 2023 - Final briefing to discuss council's recommendation: <ul style="list-style-type: none"> <u>Panel members</u>: Brian Kirk (Chair), Nicole Gurran, Sue Francis, Martin Smith, Kim Wheatley <u>Council assessment staff</u>: Michael Miocic, Shaun Garland, Selwyn Segall, Phillip Johnston, Kerry Frair, John Whyte
9	COUNCIL RECOMMENDATION	Approval

10	DRAFT CONDITIONS	Attached to the Council Assessment Report
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