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Ref: WTJ22-225
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Northern Beaches Council
PO Box 82
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Via NSW Planning Portal

SECTION 4.55(1A) APPLICATION FOR MODIFICATION OF DA2019/1419
APPROVED 22 APRIL 2020
49 FRENCHS FOREST ROAD EAST, FRENCHS FOREST (LOT 7 DP1020015)

Dear Sir/Madam,

Reference is made to development consent **DA2019/1419** granted on 22 April 2020 for “*construction of a Health Service Facility being a Medical Centre (Cancer Treatment Centre) with basement parking, signage and landscaping*” at 49 Frenchs Forest Road East, Frenchs Forest, more formally described as Lot 7 DP1020015 (subject site).

1. INTRODUCTION

This statement has been prepared in support of a Section 4.55(1A) Modification Application (MA) submitted to Northern Beaches Council, seeking to modify to development consent **DA2019/1419 (Appendix 1)** which granted consent for:

Construction of a Health Services Facility, being a Medical Centre (Cancer Treatment Centre) with basement parking, signage and landscaping

This application is made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act), on behalf of Ascot Project Management. The following supporting documentation has been provided as part of this application:

- **Appendix 1** Development Consent (**DA2019/1419**)
- **Appendix 2** Updated Architectural Plans and Schedule of changes
- **Appendix 3** Landscape Plans & Design Statement
- **Appendix 4** JHA Letter

The overall intent of the proposed minor modifications is to amend the architectural design to strengthen support for the operations of the health services facility, and amend the landscape design as directed by Ausgrid to provide a Right of Way for Ausgrid, to access their infrastructure located within the Site. It is noted that the amendments to the landscape design have been proposed to satisfy the requirements of Ausgrid. As stated in the JHA letter (**Appendix 4**), an access pathway is required to satisfy Ausgrid's access requirements, which requires changes to the landscape design of the development. The access pathway is required as no other access options are available without significantly modifying the building design. The proposed modifications listed in **Section 3** of this report will meet Ausgrid's access and landscape requirements confirmed by the ASP3 designers for the subject development.

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SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

2. SITE LOCATION AND CHARACTERISTICS

The site is identified as 49 Frenchs Forest Road East, Frenchs Forest, being legally described as Lot 7 DP1020015.

Existing attributes of the site are noted as follows:

- The site is situated within the Forest Central Business Park and affords an approximate area of 1,776m².
- The site exhibits a street frontage to Warringah Road to the south and the turning bay of the internal road to the north west.
- The site is currently undeveloped with vegetation identified in the south western corner of the site.
- Current vehicular access to the site is facilitated via the internal road off Frenchs Forest Road East.
- The Forest Central Business Park currently provides facilities for medical and commercial uses across the existing nine buildings within the business park.
- The site affords road linkages to Frenchs Forest Road East, Warringah Road, Wakehurst Parkway and Pittwater Road.
- The site is also serviced by an extensive transport network with bus routes along Frenchs Forest Road East, providing connectivity to the surrounding suburbs, Sydney CBD and the wider region.

Surrounding land uses in the immediate vicinity include:

- North – Forest Central Business Park and Frenchs Forest Road East;
- South – Warringah Road, commercial development and industrial development;
- East – Industrial development, Parkway Hotel and industrial development; and
- West – Industrial development.



Figure 1. Cadastral Map (Source: SIX Maps, 2022)



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest



Figure 2. Aerial Map (Source: Nearmap, 2022)



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

3. PROPOSED MODIFICATIONS

The proposed minor modifications sought to development consent **DA2019/1419** relate to the external building façade and the landscape.

The proposed amendments to the external façade design are intended to improve the amenity and functionality of the health services facility and accommodate the necessary service and infrastructure provider requirements.

The proposed amendments are identified by numerical notations on the Architectural Plans accompanying the application prepared by Team 2 Architects.

The proposed modifications to the building elevations and building roof plan generally comprise:

- North Elevation
 - Minor shift in location and extent of windows,
 - Minor adjustment to the positioning and extent of louvres,
- East Elevation
 - Minor shift in location and extent of windows,
 - Minor adjustment to the positioning and extent of louvres,
- South Elevation
 - Minor shift in location and extent of windows,
 - Minor adjustment to the positioning and extent of louvres,
- West Elevation
 - Minor shift in location and extent of windows,
 - Minor adjustment to the positioning and extent of louvres,
 - Repositioning of hydrant booster cupboard,
 - Minor modification to the layout and location of S-01 signage,
 - Increase of balustrade extent,
 - Addition of bollards,
 - Minor modification to the dimensions of the planter box.
- Roof Plan
 - Minor modification to louvres,
 - Minor modification in height of the lift overrun,
 - Minor modification to plant room to accommodate service requirements,
 - Reduction in dimension, both width and height, to the fire water services tank,
 - Modification of the accessible walking path for maintenance to avoid service equipment positioning.
- Landscape Plan
 - Modification to landscape contouring below ground floor.
- External Finishes
 - Finish EW.02, EW.03 and EW.04 originally nominated as precast modified to FC. Colours are consistent and remain as per the original approval.

The proposed modifications to the landscape design are subsequent of Ausgrid requirements. As demonstrated in the JHA Letter (**Appendix 4**), these changes have been driven solely by the requirements imposed by Ausgrid to accommodate the introduction of a Right of Way, for Ausgrid, to facilitate access for them to access their infrastructure which is located within the Site. An access pathway is required for Ausgrid as there are no other access options available which meet Ausgrid's Network Standards without significantly modifying the building design.

The modifications comprise:

- Inclusion of substation location,
- Introduction of trafficable turf,
- Introduction of retaining wall along landscape buffer to Warringah Road,



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

- Removal of screen planting along Eastern boundary,
- Removal of tree and planting to centre of roundabout,
- Plant Schedule revised to match the above,
- Leveling modification to reflect Civil Engineering plans, and
- General amendments for consistency with architectural landscape changes as listed above.

Appendix 2 provides a detailed list of sections changes that are sought to be modified as part of this MA.

The proposed architectural and landscape modifications do not result in any adverse visual or amenity impacts on the surrounding development and existing premises within the business park.



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

4. AMENDED DEVELOPMENT CONSENT

The desired development outcome as outlined above requires the following modifications to development consent **DA2019/1419**.

The proposed amendments are demonstrated in **red**, with deletions as a **strikethrough** and additions as **underlined**.

4.1 Proposed Conditions

Condition No. 1 Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-011 - Rev. 8	09/12/2019	Team 2 Architects
DA-020, DA-021, DA-050 , DA-104, DA-105, DA-106, DA-120, DA-200 , and DA-201 - Rev. 4	04/12/2019	Team 2 Architects
<u>DA-0050, DA-0103 - Rev. B</u>	<u>30/06/2022</u>	<u>Team 2 Architects</u>
DA-099 - Rev. 1	04/12/2019	Team 2 Architects
DA-100, DA-101, DA-102, and DA-103 - Rev. 6	04/12/2019	Team 2 Architects
DA-202 - Rev. 3	04/12/2019	Team 2 Architects
DA-300, DA-301, - Rev. 5	09/12/2019	Team 2 Architects
<u>Elevation - Sheet 1 DA-0200 - Rev. B</u>	<u>30/06/2022</u>	<u>Team 2 Architects</u>
<u>Elevation - Sheet 2 DA-0201 - Rev. B</u>	<u>30/06/2022</u>	<u>Team 2 Architects</u>
<u>Elevation - Sheet 3 DA-0202 - Rev. B</u>	<u>30/06/2022</u>	<u>Team 2 Architects</u>

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
19-635 - Sheet 100, 101, 201, and 301 Rev. C L-000, L-101, L-201, L-301, L-400, L-401, L-601, L-602 and L-701 Issue A	05/12/2019 <u>05/04/2022</u>	Arcadia



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

5. STATUTORY PLANNING FRAMEWORK

5.1 Environmental Planning and Assessment Act 1979

The EP&A Act is the principle planning and development legislation in New South Wales. Pursuant to Part 4, the proposal is local development. The modifications sought to the development consent **DA2019/1419** warrants consideration of the provisions of Section 4.55(1A) of the EP&A Act. The provisions of Section 4.55 of the EP&A Act provided in **TABLE 1** below require consideration in this instance.

TABLE 1. SECTION 4.55(1A) ASSESSMENT	
Clause	Response
(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>The proposed modification will result in the same ultimate development outcome to that previously approved. The main modification sought relates to the landscaping design and building elevations and layout.</p> <p>Section 5.1.1 of this statement demonstrates that the development as modified would result in substantially the same development as the development for which consent was granted under DA2019/1419.</p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>As above.</p>
(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	<p>Pursuant to Clause 112 of the <i>Environmental Planning and Assessment Regulation 2021</i> (EP&A Regulation), if the Section 4.55(1A) Modification relates to a development consent that was originally granted by a regional panel, the relevant Council are to notify or advertise the application.</p> <p>Given that DA2019/1419 was granted by the Sydney Planning Panel – North, which is a regional panel, notification of the subject Section 4.55(1A) Modification is required.</p>
(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.	<p>It is acknowledged that Council must consider any submissions received, concerning the proposed modifications.</p>
(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.	<p>The proposed modifications are consistent with the matters referred to in Section 4.15(1) of the EP&A Act.</p> <p>Refer to Section 5 of this Section 4.55 Statement.</p>



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

5.1.1 Section 4.55(1A) – Substantially the same

The scope of a maximum modification of a consent without constituting assessment as a standalone application can be analysed through the ambit of *Michael Standley & Associates Pty Ltd v North Sydney Council [2005] NSWLEC 358*, whereupon Commissioner Mason P. found in relation to modification of development consents that the word “modify” was given the ordinary meaning of “to alter without radical transformation”. Therefore, the extent to which a consent may be modified is that to which the consent, as modified, is as approved without radical transformation or alteration.

The development, as modified, is substantially the same development and will not result in a radical transformation of **DA2019/1419** for the following reasons:

- The modification remains a health services facility development being a medical centre, which retains the approved primary land use for health services facility purposes, and proposes no substantial change to this fundamental element of the approval;
- There are no substantial quantitative changes proposed to the approved building bulk or scale including changes to the height, GFA, or setbacks of the building;
- The function, form, operations, and importantly, public perception of the Site, as a health services facility development, being primarily used for medical centre purposes, remains largely unchanged, with the reconfigurations retaining the original intent of the development as approved.

In light of the above, the proposal as amended, is not considered to result in a “radical transformation” of the consent, as currently approved, satisfying the radical transformation test pursuant to *Michael Standley & Associates Pty Ltd v North Sydney Council [2005] NSWLEC 358*.

This is further analysed in *Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280* which applies a quantitative and qualitative test to determine what qualifies a development as being “substantially the same”, providing a comparison of the development as 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 approved development. The comparison involves an appreciation, qualitatively, as well as quantitatively, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The proposal does not result in any significant quantitative changes to the approved development, and from a qualitative perspective, the development retains its identity as a health services facility.

Therefore, the proposal as amended, will be substantially the same development as approved, and satisfies the requirements for the application to be assessed and approved pursuant to Section 4.55(1A) of the EP&A Act.

5.1.2 Section 4.15 – Reasons given by the consent authority for the grant of the consent

Section 4.15(1) of the EP&A Act specifies the matters which a consent authority must consider when determining a development application. The relevant matters for consideration under Section 4.15(1) of the EP&A Act are provided in **TABLE 2** below.

TABLE 2. SECTION 4.15(1)(A) CONSIDERATIONS	
Section	Response
Section 4.15(1)(a)(i) any environmental planning instrument, and	Refer to Section 5 of this statement.
Section 4.15(1)(a)(ii) any proposed instrument that is or has been the subject of public consultation under	There are no applicable draft instruments for consideration.



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

<i>this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i>	
<i>Section 4.15(1)(a)(iii) any development control plan, and</i>	Refer to Section 6.1 of this statement.
<i>Section 4.15(1)(a)(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i>	Not applicable.
<i>Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i>	Refer to Section 5.2 of this statement.
<i>Section 4.15(1)(b)-(c)</i>	Refer to Section 7 of this statement.

5.1.3 Section 4.46 – Integrated Development

Section 4.46 of the EP&A Act defines ‘integrated development’ as matters which require consent from Council and one or more authorities under related legislation. In these circumstances, prior to granting consent, Council must obtain from each relevant approval body their General Terms of Approval (GTA) in relation to the development.

The development is not nominated as integrated development.

5.2 Environmental Planning & Assessment Regulation 2021

This application has been prepared in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

5.2.1 Schedule 3 – Designated Development

Section 4(1) of the EP&A Regulation states, that any development described in Part 2 of Schedule 3, would be declared to be Designated Development for the purposes of the EP&A Act. The proposed development, as a health services facility, does not trigger the relevant thresholds and is therefore not considered ‘Designated Development’.

5.3 Local Planning Context

5.3.1 Warringah Local Environmental Plan 2011

The site is subject to the provisions of WLEP2011. Relevant permissibility and development standards are summarised in the subsequent sections of this report.

Zoning and permissibility

The subject site is zoned B7 Business Park pursuant to the WLEP2011.



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

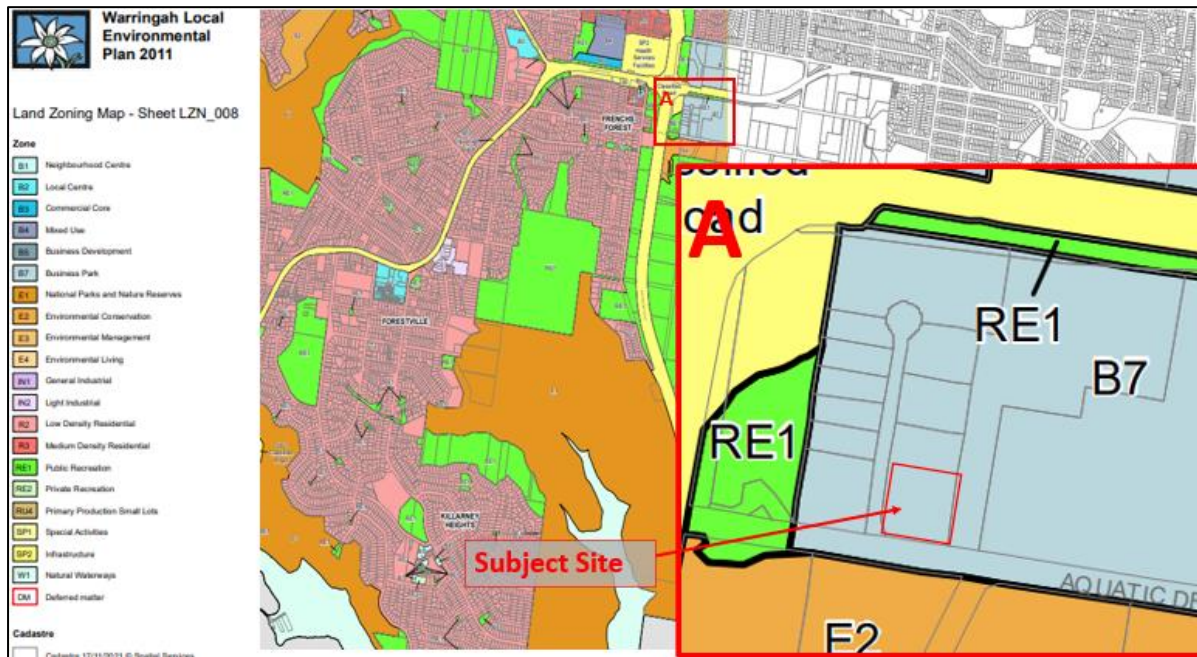


Figure 3. WLEP2011 Zoning Map (Source: NSW Legislation, 2022)

The objectives of the B7 Business Park zone include:

- To provide a range of office and light industrial uses.
- To encourage employment opportunities.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.
- To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.

Within the B7 Business Park zone, the following development is permitted without consent:

- Nil

Within the B7 Business Park zone, the following development is permitted with consent:

- Centre-based child care facilities; Garden centres; Hardware and building supplies; Light industries; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Respite day care centres; Roads; Self-storage units; Take away food and drink premises; Tank-based aquaculture; Warehouse or distribution centres; **Any other development not specified in item 2 or 4**

Within the B7 Business Park zone, the following development is permitted with consent:

- Advertising structures; Agriculture; Air transport facilities; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Boat sheds; Business premises; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Highway service centres; Home-based child care; Home businesses; Home occupations; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Marinas; Mooring pens; Moorings; Open cut mining; Places of public worship; Pond-based aquaculture; Port facilities;

SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

Recreation facilities (major); Registered clubs; Research stations; Residential accommodation; Restricted premises; Retail premises; Rural industries; Service stations; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Waste or resource management facilities; Water recreation structures; Wharf or boating facilities; Wholesale supplies

The permissibility of the development was established under the original DA and the use of the development as a medical centre will remain unchanged as approved under **DA2019/1419**. The existing development is classified as a 'medical centre' with a portion of the facility identified as 'hospital', in which both uses fall under the definition of 'health services facility'. The proposal for a health services facility is permitted with consent under WLEP2011.

Given the minor nature of the changes sought under this application, the proposed modification does not result in any of the objectives of the zone being compromised. The development will continue to be capable of achieving these objectives to the same capacity as the approved development under **DA2019/1419**. Accordingly, the approved development and modification application is considered to be accordance with the objectives of the B7 Business Park zone.

Development standards

This section provides is a summary of all WLEP2011 provisions, as they apply to the proposed development.

TABLE 3. DEVELOPMENT STANDARDS	
Clause	Comment
Principle development standards	
Clause 4.1 – Minimum Lot Size	The Site is subject to a 4,000m ² minimum lot size pursuant to WLEP2011. No subdivision is proposed under this application therefore assessment against the minimum lot size requirement is not warranted.
Clause 4.3 – Height of Buildings	The Site is not subject to a maximum building height.
Clause 4.4 – Floor Space Ratio	The Site is not subject to a Floor Space Ratio (FSR) requirement.
Clause 4.6 – Exceptions to development standards	The proposal does not seek to contravene with any development standards.
Clause 5.10 – Heritage	The Site is not a heritage item and it is not located within a conservation area.,
Clause 5.21 – Flood Planning	The Site is not identified as a Flood Planning Area under WLEP2011.
Clause 6.1 – Acid Sulfate Soils	The Site is not subject to acid sulfate soils.
Clause 6.2 – Earthworks	DA2019/1419 involve excavation for the purposes of basement car parking, however the modification application does not constitute works to the approved basement. Therefore, the recommendations in the approved Geotechnical report will remain the same.
Clause 6.4 – Development on sloping land	The Site has been identified within 'Area A' on Council's Landslip Risk Map. A Geotechnical Report was included in DA2019/1419 . This outlines the proposed excavation works in DA2019/1419 would not adversely impact on soil stability or the environmental function of the surrounding land. The modification application



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

TABLE 3. DEVELOPMENT STANDARDS

Clause	Comment
	does not seek to amend the excavation works approved in DA2019/1419 , therefore the further consideration of clause is not warranted.
Clause 6.5 – Coastline hazards	The Site is not located within an area designated as coastline hazard.

6. NON-STATUTORY PLANNING FRAMEWORK

6.1 Warringah Development Control Plan 2011

The *Warringah Development Control Plan 2011* (WDPC2011) supplements WLEP2011 and provides more detailed provisions to guide development.

The proposal as modified does not seek to contravene the development controls.

7. LIKELY IMPACTS OF DEVELOPMENT

7.1 Context and Setting

The approved development involves the construction of a Health Services Facility, being a Medical Centre (Cancer Treatment Centre) with basement parking, signage and landscaping located at 49 Frenchs Forest Road East, French Forest.

The proposal, as modified, maintains the abovementioned development, with the most significant modifications being to the approved landscaping and building elevations and layout, which therefore would not alter the context or setting of the subject site and its intended operations.

The proposed modifications ensure the functional operation of the subject site in accordance with the needs of the users, whilst not impacting on any other operations. The proposal, as modified, would not exhibit any significant environmental impacts and will not adversely impact on the amenity or operations of any adjoining sites. Therefore, the proposal is considered compatible with the site context and setting.

7.2 Traffic and Transport

There are no proposed modifications to the current traffic and transport provisions on Site.

7.3 Engineering

The proposal would not impact on stormwater management or other civil engineering matters.

7.4 Other Matters for Consideration

All other matters for consideration have been previously assessed as part of **DA2019/1419** and remain unaffected by the proposed modifications.

7.5 Suitability of Site for Development

The Subject Site will remain suitable for the purpose of a health service facility that will respond to the characteristics of the site and surrounding locality.



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

7.6 Submissions

No submissions have been received at the time of writing this statement. Any submissions received post lodgement shall be reviewed and considered.

7.7 The Public Interest

The development as modified would have no adverse impact on the public interest. The proposed modifications would improve the functionality of operations, with no adverse visual or amenity impacts for neighbouring properties or the public domain.



SECTION 4.55(1A) APPLICATION

Modification to DA2019/1419

49 Frenchs Forest Road East, Frenchs Forest

8. CONCLUSION

This application seeks consent for modifications to development consent **DA2019/1419**, pursuant to Section 4.55(1A) of the EP&A Act. The proposal has been prepared after taking into consideration the following key issues:

- Development history of the subject site;
- Development Consent **DA2019/1419**;
- Site context and locality;
- Relevant heads of consideration under Section 4.55(1A) of the EP&A Act; and
- Relevant statutory and non-statutory planning instruments.

The proposed modifications are considered acceptable, and worthy of support by Northern Beaches Council, for the following reasons:

- The proposed modifications reflect ongoing design refinements to accommodate the required easement for the utility provider;
- The proposed modifications maintain compliance with the key development standards contained within the WLEP2011; and
- The development, as modified, will remain substantially the same, and will not result in additional environmental impacts.

In light of the above, the modifications proposed to development consent **DA2019/1419** are considered worthy of support by Northern Beaches Council.

Should you require additional information, please do not hesitate to contact Macy Fenn via email at mfenn@willowtp.com.au.

Yours faithfully,



Andrew Cowan
Director
Willowtree Planning Pty Ltd

