



25 June 2021

DB:NMA 16-122

General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir/ Madam,

RE: Section 4.56(1) Application to modify consent to Development Application N0123/17 - Demolition of an existing aged care facility and construction of a new residential aged care facility at 184 Garden Street, Warriewood

1 INTRODUCTION

We write on behalf of Opal Aged Care Pty Ltd (Opal) ("the applicant") relating to Development Application reference DA N0123/17 ("the original consent") approved by the Land and Environment Court (LEC) on 8 November 2017 for *"the demolition of an existing aged care facility and construction of a new residential aged care facility at 184 Garden Street, Warriewood."*

The original consent was modified by way of a Section 4.56(1) application (MOD2019/0342) and was approved on 15 October 2019 for minor design amendments which included: the conversion of six (6) residential care rooms on the ground floor into an allied health facility; amendments to the design of the staff courtyard; incorporation of new terraces on the ground and first floors; and amendments to the staging plan.

The consent was further modified (MOD2020/0007) ("the consent") and approved on 10 March 2020 to amend the wording of Condition 22 of the original consent to require compliance with an Environmental Management Plan.

BBC Consulting planners has been instructed by the applicant to prepare this report to accompany a Section 4.56(1) modification application to further modify the consent to allow for minor design changes to the approved landscaped courtyards located at ground floor level, to the north of the site. The proposed amendments to the layout of the courtyard will improve the design and function of the landscaped courtyards, improve access to garden areas from the adjoining wings and will improve overall amenity and enjoyment of the Residential Care Facility (RCF). The proposed development will be substantially the same development as that which was originally approved.

2 APPLICATION BASIS

The application seeks to modify the consent in accordance with the provisions of Section 4.56(1) of the EP&A Act for the following reasons:

Acoustic Advice Note (see **Appendix 6**) in support of the amendments to the design of the courtyards.

The amended landscape plans have been reviewed by the Project Engineer confirming that the modification of the pathway arrangement is compliant with Condition 24 of the consent which requires that no more than 55% of the total site area is occupied by impervious surfaces (see **Appendix 7**).

6.1 Changes to consent

The proposed modifications can be given effect by amending the wording of Condition A0A of the consent to reflect the revisions to the approved architectural and landscaping drawings as set out below.

Condition A0A of the consent provides for the development to be carried out in accordance with the approved drawings/documentation. The approved drawings/ reports references to be modified by virtue of this S4.56(1) application are detailed below.

Approved drawings/documents to be amended have been ~~struckthrough~~ with the amended/ additional drawing reference number highlighted in **bold**.

Approved Drawing Reference:	Date:	Amended Drawing Reference	Date:
Architectural Plans prepared by Group GSA			
Site Plan – DA-1101 Issue A	23/03/2017	Site Plan – DA-1101 Issue B	28/05/2021
Ground Floor Plan – DA-2000 Issue C	25/06/2019	Ground Floor Plan – DA-2000 Issue D	28/05/2021
Level 1 – Floorplan – DA-2001 Issue C	25/06/2019	Level 1 – Floorplan – DA-2001 Issue D	28/05/2021
Elevations – Sheet 1 – DA-3000 Issue C	25/06/2019	Elevations – Sheet 1 – DA-3000 Issue D	28/05/2021
Elevations – Sheet 2 – DA-3001 Issue B	25/06/2019	Elevations – Sheet 2 – DA-3001 Issue C	28/05/2021
Sections 1 – DA-3100 Issue B	25/06/2019	Sections 1 – DA-3100 Issue C	28/05/2021
Landscape Plans prepared by Taylor Brammer Landscape Architects			
Cover Page – LA00	24/06/2019	Cover Page – LA00	25/05/2021
Landscape Plan – Ground Floor – LA02	24/06/2019	Landscape Plan – Ground Floor – LA02	18/05/2021
Planting Plan – Ground Floor – LA03	24/06/2019	Planting Plan – Ground Floor – LA03	18/05/2021
Landscape Section B & C – LA05	24/06/2019	Landscape Section B & C – LA05	18/05/2021

Approved Drawing Reference:	Date:	Amended Drawing Reference	Date:
Landscape Plan – Level 1 – LA06	24/06/2019	Landscape Plan – Level 1 – LA06	23/05/2021
Standard Details – LD02	24/06/2019	Standard Details – LD02	18/05/2021
Standard Details – LD03	24/06/2019	Standard Details – LD03	18/05/2021
Engineering Plans prepared by Henry & Hymas			
Site Detail Plan – DA C100 Revision 10	27/06/2019	Site Detail Plan – DA C100 Revision 10	18/06/2021

7 PRESCRIBED FORM

The prescribed requirements for a Section 4.56(1) application are set out in Clause 115(1) of the *Environmental Planning and Assessment Regulation 2000*. Northern Beaches Council has transitioned to electronic lodgement of Development Applications (and subsequent modifications) via the NSW Planning Portal. The relevant applicant details, owner's consent and associated documentation to be included with this modification application has been submitted via the portal.

8 CONSIDERATION OF RELEVANT PROVISIONS OF SECTION 4.56

Section 4.56 of the EP&A Act states as follows:-

“(1) 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) 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

(b) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, and

(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

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, 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.

In relation to **Section 4.56(1)(a)**, Council can be satisfied that the development as approved under DA N0123/17 will be substantially the same development once modified in accordance with this application. The proposal does not alter the nature of the original development which remains a residential aged care facility. There is no significant change to the appearance, functionality, use or scale of the development. The implications of amending the layout and design of the courtyards to improve accessibility are inconsequential in terms of their impact on the environment and is cognisant with the intended use of the RCF which is to provide residents with access to quality healthcare services ensuring they continue to live a healthy, comfortable and abundant life and ensuring residents maintain connections with the general community.

The application is accompanied by amended architectural drawings (see **Appendix 1**), landscaping plans (see **Appendix 2**), civil plans (see **Appendix 3**), BCA Compliance Statement (see **Appendix 4**), Accessibility Statement (see **Appendix 5**) an Acoustic Advice Note (see **Appendix 6**) and an Engineering Advice Note (see **Appendix 7**). The appended documentation demonstrates that the proposed changes will not have a discernible impact on the development as originally approved. The minor design changes will have an inconsequential impact to the BASIX rating of the approved building and will not affect the thermal comfort, water or energy scoring. The current BASIX certificate remains consistent with the proposed development.

The minor design changes will improve accessibility to the courtyards and enhance the general amenity of the residents therein. The relocation of the proposed pergolas along the northern boundary of the site will have no discernible, audible acoustic impact as set out in the Acoustic Advice Note.

The requirements of **Section 4.56(1)(b), (c) and (d)** are to be met by Council as required in its consideration of this application.

Section 4.56(1A) of the EP&A Act further states:

“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.”

The following section assesses the proposed modifications under the relevant heads of consideration of Section 4.15 of the Environmental Planning and Assessment Act 1979.

6.2 Section 4.15(1)(a) – Statutory Planning Considerations

Section 4.15(1)(a) requires the consent authority to take into consideration:

“(a) the provisions of:

(i) *any environmental planning instrument, and*

- (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (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*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
 - (v) *(Repealed),*
- that apply to the land to which the development application relates”*

The modifications do not alter any of the findings made by the Land and Environment Court in determining the DA in relation to relevant planning instruments, including the Pittwater LEP 2014 and the Pittwater 21 DCP.

6.3 Section 4.15(1)(b) – Environmental, Social and Economic Impacts

Section 4.15(1)(b) requires the consent authority to consider:

“(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”

The relevant matters are addressed below.

Impacts on the Natural Environment

No existing trees, vegetation, or landscaping will be affected as a consequence of the proposed modifications. The amended landscape plans reflect the minor changes to the layout and arrangement of landscaped areas and minor variations to the approved planting schedule. None of the existing or approved trees on the site will be impacted by the proposed modifications. There is no significant impact on the natural environment.

Impacts on the Built Environment

The proposed development will have an inconsequential impact on the built environment. Externally, the proposed modifications will see the installation of two (2) ground floor egress doors on the northern elevation of the RCF. These doors will be constructed and finished in matching materials and will present no adverse design impacts in the context of the approved development. Minor landscaping works to re-locate the proposed pergolas in Courtyard 3 and Courtyard 4 will arguably have a positive impact, increasing the sense of openness in these spaces and improving the relationship between natural and built forms.

- the development as modified is for substantially the same development as approved;
- the requested modifications are of minor environmental impact and gives rise to no significant additional impacts; and
- the modifications will have no adverse effects on the amenity of adjoining land.

The modification for which consent is sought does not alter the original findings made in relation to DA N0123/17 regarding the reasonableness and appropriateness of the development when considered in the light of the matters listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The requested modifications will have no significant adverse environmental impacts. The development as modified will be substantially the same as the development originally approved.

We trust that you find this application acceptable. If further details or justification is required in support of the requested modifications, please do not hesitate to contact the undersigned.

Yours faithfully,

BBC Consulting Planners



Dan Brindle
Director

Email dan.brindle@bbcplanners.com.au



Appendix 1 – Amended Architectural Plans



Appendix 2 – Amended Landscape Plans



Appendix 3 – Amended Civil Plans



Appendix 4 – BCA Compliance Statement



Appendix 5 – Accessibility Report



Appendix 6 – Acoustic Advice Note
