

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0413
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Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot 7 DP 1020015, 49 Frenchs Forest Road East FRENCHS FOREST NSW 2086
Proposed Development:	Modification of Development Consent DA2019/1419 granted for construction of a Health Services Facility, being a Medical Centre (Cancer Treatment Centre) with basement parking, signage and landscaping
Zoning:	Warringah LEP2011 - Land zoned B7 Business Park
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Forest Central Business Park Pty Ltd
Applicant:	Ben Eddy

Application Lodged:	18/08/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	09/09/2022 to 23/09/2022
Advertised:	09/09/2022
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The Modification Application seeks consent for the following changes to DA2019/1419:

- Location and extent of windows on all facades;
- Location and extent of louvres on all facades;
- Modification to signage and hydrant boosters on the western elevation;
- Addition of bollards;
- Modifications to landscape plan and retaining walls to provide better access the Ausgrid substation in the southeast corner of the site.
- Modifications to planting schedule to facilitate the improved access.

Herein this report these changes are described as the 'modifications'.

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 the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D21 Provision and Location of Utility Services

SITE DESCRIPTION

Property Description:	Lot 7 DP 1020015 , 49 Frenchs Forest Road East FRENCHS FOREST NSW 2086
Detailed Site Description:	<p>The development site is Lot 7, DP 1020015, No. 49 Frenchs Forest Road East, which occupies a rectangular shaped area of some 1,774m² within the <i>Forest Central Business Park</i>. The site has a frontage (but no vehicular access) to the northern side of Warringah Road, Frenchs Forest.</p> <p>The site is currently under construction to build a health services facility.</p> <p>The surrounding areas to the north (opposite side of Frenchs Forest Road East) comprise traditional residential dwellings while the area to the west, east and south generally comprises a mixture of old and new industrial and commercial buildings. Interspersed within this are a mixture of schools, an aquatic centre, a hotel (under redevelopment), a drive-through fast food restaurant (KFC) and a small shopping precinct.</p> <p>Vehicular access to the site is provided from Frenchs Forest Road East via two driveways. The eastern driveway provides</p>

for entry and the western driveway provides for exit.

The adjoining lot to the east at No.39 Frenchs Forest Road East has been approved for a new Hotel, Dan Murphy's bottle shop, 100 room motel and 271 onsite parking spaces. That development is now under construction.

Map:



SITE HISTORY

- Development Application no. 2019/1419 was approved on 22 April 2020 for the construction of a health services facility, being a medical centre for cancer treatment with associated basement car parking, signage and landscaping.

The consent has been modified a number of times, however those modifications are not of particular relevance to the modifications the subject of this Modification Application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 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;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/1419, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The scope of works sought is generally limited to window alignment, louvre alignment, landscaped changes, access changes and changes to the access. • The works do not result in any amenity impacts to residential properties and are largely non-discernible commensurate to the approved development.
<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>	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2019/1419 for the following reasons:</p> <p>The modifications do not alter the approved land use or the intensity of that land use. The changes are generally architectural detailing in nature, or are made to facilitate the proper maintenance of easements and infrastructure. From the public and private domains, the works are generally consistent with what is already approved on the site, and therefore the works are deemed to be substantially the same.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
development consent, 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.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 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 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 4.15 (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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 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 Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional justification was sought with relation to the need for access to the Ausgrid easement.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are

Section 4.15 'Matters for Consideration'	Comments
and economic impacts in the locality	<p>addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/09/2022 to 23/09/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, no additional conditions</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health	Supported, without additional conditions

Internal Referral Body	Comments
(Industrial)	
Landscape Officer	<p><i>Supported, with additional conditions</i> <u>Additional Information and Amended Plans comment 3/11/2022</u> The information provided by the applicant is noted. Clarity has been provided regarding the requirements of Ausgrid for landscape works around the sub-station and access requirements.</p> <p>An amended set of Landscape Plans (Rev B dated 28/10/22 prepared by Arcadia) are noted and supported as an acceptable landscape outcome with regard to the service authority requirements.</p> <p>No objections are raised to the landscape works as indicated on Landscape Plans Rev B dated 28/10/22 prepared by Arcadia. Landscape Plan references should be updated in Conditions of Consent if the Modification is to be supported.</p> <p>With regard to Conditions of Consent for DA 2019/1419 affected by this modification, it would also appear that Condition 19 would now no longer be required if the Modification is to be supported.</p> <p>19. Amended Plans - Landscape <i>Landscape Plans are to be amended to replace the 4 x Waterhousia floribunda and 4 x Stenocarpus sinuatus trees indicated in the setback to Warringah Road with eight locally native tree species capable of attaining a minimum height of 15 metres at maturity with minimum pot size of 75 litres.</i> <i>Reason: Environmental amenity</i></p> <p><u>Original Comment</u> The Modification proposes significant amendment to the approved landscape works, particularly along the Warringah Road frontage and the eastern boundary.</p> <p>The SEE indicates that the removal of trees, shrubs and groundcovers from the approved plans is required to accommodate access for Ausgrid. It is also apparent that the detention tank has doubled in size.</p> <p>The amended landscape plans indicate removal of a further 3 existing trees along the Warringah Road frontage and deletion of 6 replacement trees.</p> <p>It would be of assistance if details of the required access for Ausgrid were provided with the application to confirm that the extent of area being deleted from the landscape planting is actually required.</p> <p>The removal of 3 additional trees and deletion of 6 replacement trees in addition to the shrubs and groundcovers proposed to be deleted could not be supported without clarification of the access requirements, which presumably caters for truck access and turning radii.</p>

Internal Referral Body	Comments
	At this stage, the proposal is not able to be supported with regard to landscape issues due to lack of information to make an assessment.
NECC (Development Engineering)	<p>Supported, without additional conditions</p> <p>The proposed modification to the approved landscape area to accommodate access to the substation does not alter the original assessment of the application by Development Engineering.</p> <p>Development Engineering support the proposal with no additional or modified conditions of consent recommended.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, with additional conditions</p> <p>The proposal has been reviewed by Ausgrid who raise no objections to the proposal, subject to the imposition of additional conditions as detailed in their response. These conditions are endorsed in the recommendations of this report.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 to be acceptable against.

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (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.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for industrial / commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the health/commercial land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

The site is not subject to a building height of FSR Principal Development Standard. Notwithstanding that, no element of this Modification Application alter the previously approved floor space or height, and therefore no further assessment against these matters is required.

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

The scope of works sought under this Modification Application do not alter the previously approved built form outcomes pursuant to Part D of the WDCP 2011, and therefore no further assessment against these matters is required.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4 Site Coverage	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
B14 Main Roads Setback	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D21 Provision and Location of Utility Services

A portion of the Modification Application pertains to the provision and location of utility services, particularly with regards to an easement for Ausgrid. Ausgrid states that:

This easement was acquired for the 66,000 volt transmission assets currently owned and operated by

Ausgrid. The purpose of the easement is to protect the transmission assets and to provide adequate working space along the route of the lines for construction and maintenance work. The easement also assists Ausgrid in controlling works or other activities under or near the transmission lines which could either by accident or otherwise create an unsafe situation for workers or the public, or reduce the security and reliability of Ausgrid's network.

The Ausgrid Referral Response includes a number of requirements regarding the continued access to this easement. The works sought under this Modification Application are consistent with Ausgrid's requirements and therefore, are consistent with the requirements of part D21 *Provision and Location of Utility Services*.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application 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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0413 for Modification of Development Consent DA2019/1419 granted for construction of a Health Services Facility, being a Medical Centre (Cancer Treatment Centre) with basement parking, signage and landscaping on land at Lot 7 DP 1020015,49 Frenchs Forest Road East, FRENCHS FOREST, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-0050 B - Roof Plan	30 June 2022	Team 2 Architects
DA-0103 B - Floor Plan - Ground	30 June 2022	Team 2 Architects
DA-0200 B - Elevations - Sheet 1	30 June 2022	Team 2 Architects
DA-0201 B - Elevations - Sheet 2	30 June 2022	Team 2 Architects
DA-0202 B - Elevations - Sheet 3	30 June 2022	Team 2 Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BCA & Access Capability Statement (P220_482)	10 August 2022	Design Confidence

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L-101 B - Landscape Masterplan	28 October 2022	Arcadia
L-201 B - Setout and Grading Plan	28 October 2022	Arcadia
L-301 B - Hardworks Plan	28 October 2022	Arcadia
L-400 B - Plant Schedule	28 October 2022	Arcadia
L-401 B - Planting Plan	28 October 2022	Arcadia
L-601 B - Landscape Softworks Details	28 October 2022	Arcadia

L-602 B - Landscape Softworks Details	28 October 2022	Arcadia
L-701 B - Landscape Specification	28 October 2022	Arcadia

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Delete Condition 19 - Amended Plans - Landscape.

C. Add Condition 2A - Compliance with Other Department, Authority or Service Requirements to read as follows:

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	17 September 2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Adam Susko, Principal Planner

The application is determined on 10/11/2022, under the delegated authority of:



Rodney Piggott, Manager Development Assessments