

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0488
<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 100 DP 709585, 16 Myoora Road TERREY HILLS NSW 2084
<b>Proposed Development:</b>	Modification of Development Consent DA2019/1304 granted for Partial use of premises as a veterinary hospital
<b>Zoning:</b>	Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Dalmacija Sydney Social Club Ltd Northside Veterinary Property Pty Ltd
<b>Applicant:</b>	The Cyclo Group Pty Ltd

<b>Application Lodged:</b>	21/09/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	04/10/2022 to 18/10/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 12 March 2020 under Development Application DA2019/1304 for partial use of a premises as a veterinary hospital. The remainder of the site is occupied by a 'recreational club'. The hospital is to be shared by Northside Vet Service (NEV) and Northside Emergency Vet Service which when combined propose to operate from the site 24 hours a day, 7 days a week.

Under this consent, the following condition was imposed:

#### **25. Hours of Operation**

*The hours of operation are to be restricted to:*

- *Monday to Friday – 6:00am to 6:00pm (Northside Veterinary Service) and 6:00pm to 6:00am (Northside Emergency Veterinary Services)*
- *Saturday and Sunday – 6:00pm to 6:00am (Northside Emergency Veterinary Services)*

*Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.*

*Reason: Information to ensure that amenity of the surrounding locality is maintained.*

This application has been made pursuant to Section 4.55(1A) of the EP&A Act 1979 and seeks to amend Condition 25 and the approved plans. The applicant proposes to amend Condition 25 to read as follows:

### **25. Hours of Operation**

*The hours of operation are:*

- *Monday to Sunday: 24 hours a day.*

It is noted that Condition 25 imposed under the aforementioned consent was an error as 24 hour operation was proposed. Council did not object to the 24 hour operation of the veterinary hospital.

The amendments to the plans are as follows:

- New entry ramp relocated and gate at entry on front northwest elevation.
- Internal alterations to the ground floor and first floor levels to suit the needs of the veterinary services.
- Convert a portion of the 'recreational club' into additional veterinary space, including at the northwest corner of the ground floor and the eastern portion of the first floor.

## **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

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 100 DP 709585 , 16 Myoora Road TERREY HILLS NSW 2084
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment that is irregular in shape, with a primary frontage of 74.9m (combined) to Myoora Road and a secondary frontage of 46.67m to Mona Vale Road. The site has a maximum depth of 245.255m and a surveyed area of 9887m<sup>2</sup>.</p> <p>The site is located within RU4 Primary Production Small Lots zone and accommodates a two (2) storey brick building within the south-western portion of the property that is currently occupied by the Dalmacija Sydney Croatian Club. A car park is located within the north-western portion of the site, with vehicular and pedestrian access is currently gained via a driveway entrance from Myoora Road.</p> <p>The site experiences a fall of approximately 4.98m (2% slope) that slopes from the Mona Vale frontage towards the Myoora Road frontage.</p> <p><b>Description of Surrounding Development</b></p> <p>Adjoining development comprises an aquarium shop, restaurant facilities and an antiques store. Surrounding development is characterised by a mixture of residential dwellings along Myoora Road, landscape nurseries, boarding kennels, Forest Coach Lines bus depot and a golf course. The veterinary hospital is relocating from 335 Mona Vale Road, that is less than 300m from the subject site.</p>

Map:



## SITE HISTORY

The land has been used for recreational club purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Development Consent No. 83/164 was determined by the granting of approval by Council for the following development - Erect a Recreation Club.
- Modification of Development Consent No. 83/164 was determined by the granting of approval by Council on 19 October 1993. The modification related to deletion of Condition 21 which required the construction of a footpath on Myoora Road.
- Development Application DA2019/1304 for partial use of a premises as a veterinary hospital approved by Council on 12 March 2020.

## 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 DA2019/1304, 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
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><b>Yes</b></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"> <li>• The changes proposed do not alter the footprint or height of the existing building.</li> </ul>
(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>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 DA2019/1304 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The original consent provided for use of part of the site for veterinary services. Consent was sought for 24-hour operation however, the consent was issued with Condition 25 in error. This application seeks to modify condition 25 to permit 24-hour operation. Hence, there are no changes to the proposed 24 hour operation.</li> <li>• The modified proposal does not alter the approved land use on the site.</li> <li>• The changes proposed are located internally within the existing building.</li> <li>• There are no changes proposed to the existing number of staff.</li> </ul>
<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</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
of a 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 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – 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&amp;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>Clause 61</u> of the EP&amp;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&amp;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 and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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	No submissions were received.
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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bushfire Report was submitted with the original development application. Conditions 8 and 18 of the development consent will ensure that the work is carried out in accordance with the requirements specified in the aforementioned Bushfire Report.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/10/2022 to 18/10/2022 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	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. from Fire and Disability subject to retention of conditions 7,8, 17, 18, 23 of the Development Consent (DA2019/1304)
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Proposal to increase trading hours to an approved DA2019/1304 and</p>

Internal Referral Body	Comments
	<p>as quoted from the SEE:</p> <p>It is also proposed to amend the plans. Amended plans have been prepared by Cyclo Construction + Fit out, Revision F and dated 24.07.2020. These plans include the following amendments:</p> <ul style="list-style-type: none"> <li>• New entry ramp relocated and pool fence/gate at entry on front northwest elevation.</li> <li>• Internal alterations to the ground floor and first floor levels to suit the needs of the veterinary services.</li> <li>• Convert a portion of the 'recreational club' into additional veterinary space, including at the northwest corner of the ground floor and the eastern portion of the first floor.</li> </ul> <p>Previously we commented on the original DA , which we and the acoustic assessment based on 24 hour operation.</p> <p>Noise</p> <p>The noise impact assessment prepared by Acoustic Logic referenced as 20191068.1 and dated 05/09/2019 undertook an assessment of the expected noise impact on residential receivers of the expected noise generated by (15) dogs staying at the clinic overnight. The report proposes several recommendations to construction that would reduce noise generated that should be adopted into any consent and also goes on to say "A detailed assessment should be conducted at CC stage, by a suitably qualified Acoustic Consultant, to ensure emissions from keeping animals at the premise comply with the noise emission objectives presented in table 3". Table 3 is for noise emission objectives for the development.</p> <p>Currently there are no concerns with acoustics of the proposed development that cannot be satisfied with the ongoing current conditions being imposed.</p> <p>We have not located the CC stage acoustic assessment to determine compliance, if work has already commenced. The original DA consent conditions for acoustic treatments will still remain so repeating them is not required.</p> <p>The presence of staff during a 24 hour operation, rather than dogs simply being boarded over night is considered a better outcome, as staff will be able to deal with any noisy dogs issues.</p> <p>Therefore Environmental Health supports the proposed modification with additional conditions in regard to the relocated X-Ray area.</p>
Traffic Engineer	<p>The proposed changes to the operational hours and reallocation of floor space within the existing building are noted. As the staff numbers are not being adjusted there is unlikely to be an increase in the parking demands generated by the modified development. It is however noted that the parking provisions are such that there is likely to be more parking than required at most times on the site. It is also noted that there are no changes being proposed to the approved access arrangements</p>

Internal Referral Body	Comments
	There are no traffic engineering objection to approval of the modification

## 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 (Resilience and Hazards) 2021

#### Chapter 4 – Remediation of Land

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 recreational 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 veterinary hospital 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 proposed amendments do not alter the existing building footprint or envelope. Therefore, there are no applicable principal development standards.

#### Compliance Assessment

Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

### Warringah Development Control Plan

### Built Form Controls

The proposed amendments do not alter the existing building footprint or envelope. Therefore, there are no applicable built form controls.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

### **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. Mod2022/0488 for Modification of Development Consent DA2019/1304 granted for Partial use of premises as a veterinary hospital on land at Lot 100 DP 709585, 16 Myoora Road, TERREY HILLS, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 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

SK-A100 (Revision N) - Ground Floor Proposed Layout	26 July 2022	Cyclo Construction + Fitout
SK-A101 (Revision M) - First Floor Proposed Layout	26 July 2022	Cyclo Construction + Fitout

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
S4.55 TRAFFIC AND PARKING ASSESSMENT REPORT REF. 19182	25 August 2022	Varga Traffic Planning Pty Ltd

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

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

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

### 13A. X-Ray shielding calculation assessment and plans

Prior to any Construction Certificate being issued, detailed plans of radiation shielding and proposed attenuation must be prepared by a suitably qualified person and submitted to the Principle Certifier where required by regulation.

Reason: To protect public health.

## CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

### 24A. X-Ray area - Compliance with shielding calculation report

Prior to any Occupation Certificate being issued, details are to be supplied to the Principal Certifier by a qualified and experienced person(s) to confirm compliance with the recommendations of the shielding calculations report where required by regulation prior to Construction Certificate.

Reason: To protect staff and members of the public from the effects radiation.

## ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

**Modify Condition 25 to read as follows:**

### 25. Hours of Operation

The hours of operation are:

- Monday to Sunday: 24 hours a day.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

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

**Signed**



**Thomas Burns, Planner**

The application is determined on 20/10/2022, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**