

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0376
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 38 DP 7236, 23 Bassett Street MONA VALE NSW 2103 Lot 2 DP 748426, 33 Bassett Street MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2020/0816 granted for Demolition works and construction of a Seniors Housing Development (Residential Care Facility)
Zoning:	R2 Low Density Residential
Development Permissible:	Yes, under SEPP (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Thompson Health Care Pty Ltd
Applicant:	Thompson Health Care Pty Ltd

Application Lodged:	28/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	10/08/2022 to 24/08/2022
Advertised:	10/08/2022
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Proposed Works

The proposed modification seeks the deletion of the previously approved ramped pedestrian access pathway through the road reserve along Bassett Street to Barrenjoey Road. The deletion of the required upgrades to the adjacent driveway access, the bus stop outside No. 72 Barrenjoey Road and part of the existing footpath are also sought.

The upgraded pedestrian access pathway and bus stop were required by the Northern Beaches Local Planning Panel as part of the approved DA2020/0816 in order to satisfy the requirements of SEPP Housing for Seniors or People with a Disability 2004 (SEPP HSPD) clause 26(3).

Application of SEPP HSPD

Despite being repealed and replaced by SEPP Housing, SEPP HSPD remains applicable to the subject development under the savings and transitional provisions of SEPP Housing. As such, this report assesses the proposed deletion of the pedestrian access pathway and the use of the existing footpath against Section 26 of SEPP HSPD.

SEPP HSPD Section 26 is a development standard and the application includes a Clause 4.6 request to justify the variation. The applicant's request is considered to be well-founded given the limited extent and length of the non-compliant gradient along the existing footpath, the availability of services within the residential care facility and the provision of alternative transport via a shuttle bus service. It is also noted that SEPP Housing does not require the provision of a pedestrian access pathway for new residential care facilities. While no objections to the pedestrian access pathway were raised by Council's Referral teams in the assessment of DA2020/0816, it is considered that the new pathway is unnecessary and that its deletion facilitates a better outcome in relation to the natural environment, provision of public infrastructure and neighbourhood amenity.

Changes to Conditions

The modification proposes/necessitates changes to Condition Nos. 1(a), 20, 39 and 62, the deletion of Condition No. 45 and the addition of Condition No. 110 as detailed below. Black text indicates parts of the approved conditions that remain unchanged, red text indicates changes to the approved conditions that are proposed by the applicant and blue text indicates changes to conditions or additional requirements resulting from Council's assessment process.

1(a). Approved Plans

The following changes are proposed to Condition 1(a) Approved Plans:

- Deletion of reference to plan No. A'12 Bus Stop Access Path, Rev. A, 20 January 2021, prepared by Gartner Trovato Architects
- Inclusion of reference to updated Statement of Compliance, dated 10 March 2022, prepared by Accessible Building Solutions

Planning Comment: The proposed changes are supported by the assessing officer for the reasons discussed in this report.

20. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include **four (4) copies of Civil** Engineering plans for the design of drainage pits and pipe connection from the site into the existing Council drainage system in Bassett St, 3 vehicular crossings, reconstruction of concrete footpath and reconstruction of the redundant laybacks to kerb, footpath and turf and replacement street tree planting which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1, the concept engineering plans by ACOR Consultants, drawing number SY140363 C3.01 Issue C dated 29.10.20, and the revised footpath plan prepared by Gartner Trovato Architects, drawing number A 12 Revision A dated 20/01/21 21. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. The vehicular crossing width at the boundary for the below ground car park and loading dock shall have a maximum width of 8.0 metres and the profile is to be in accordance with Council drawing ~~A4/3330/3-NL~~ Normal Low.
2. The vehicular crossings for the entry and exit for the ambulance shall be 3.0 metres wide and the profile is to be in accordance with Council drawing ~~A4/3330/1-N~~ Normal.
3. ~~The existing driveway crossing servicing the current development is to be modified to suit the approval.~~
4. All redundant laybacks shall be removed and reinstated to kerb and gutter, footpath and turf.
5. ~~Removal of existing concrete footpath and provision of a new 1.5 metre wide concrete footpath fronting the development site and extended to the bus stop located in front of 72 Barrenjoey Road to provide for safe pedestrian access to public transport. The footpath grade shall be not be more than 1:14 except in accordance with the requirements of Clause 26 of HSPD 2004. Any trees/vegetation which need to be removed must be approved by Council with suitable replacement trees provided.~~
~~Removal of the existing kerb, gutter and concrete footpath and provision of new kerb and gutter and 2.0 metre wide concrete footpath fronting the development site between 21 Bassett St and the existing driveway crossing servicing 37 and 39 Bassett St.~~
6. ~~Provision of a DDA compliant bus stop outside of 72 Barrenjoey Road.~~
~~Any proposed pedestrian connections from the site to the public footpath fronting the site.~~
7. A pit and pipe drainage system within the public road in Bassett St shall be proved for the connection of the proposed drainage system.
8. All existing and proposed electrical and telecommunications servicing the site and in the adjacent road reserve are to be located underground.
9. All public utility services adjustments are to be detailed with concurrence from the relevant service authority if adjustment is required with costs borne by the applicant.

~~The design of the new elevated footpath/ramp must also address the following matters:~~

- ~~• Delineation of pedestrian pathways from vehicles using shared driveway, protection of the walkway structure from vehicle impact and appropriate design of balustrading.~~
- ~~• Surface drainage of stormwater.~~
- ~~• Integrated access from ramp landing to ground level at Barrenjoey Road.~~
- ~~• Obtain concurrence from RMS/TfNSW as state road authority for Barrenjoey Road.~~
- ~~• Confirmation that the structure will not impact existing utilities.~~
- ~~• Confirmation that the shared driveway from Bassett Street meets the required standards, including signage, and that the structure will not reduce the availability of off street parking.~~
- ~~• Address the poor condition of the existing asphalt surface of the driveway that has been used by the current facility for many years.~~

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

Planning Comment: The deletion of the pedestrian access pathway is supported for the reasons discussed in this report. Council's Development Engineering team raised no objection to the proposed

changes, subject to the additional requirements in blue text that ensure the provision of appropriate vehicular and pedestrian access.

39. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment ~~and the Addendum to Arboricultural Impact Assessment~~, including:

- i) works as recommended in section 5.3 Minimising Impacts on Trees to be Retained, including tree 5 (Cooks Pine), tree 6 (Chinese Elm), tree 10 (Umbrella Tree) in adjoining property, trees 11 and 12 (Old Man Banksia) within road verge, group 13 (Swamp She-Oak), group 14 (Brush Cherry), tree 15 (Paperbark), and tree 16 (Common Ash),
- ii) works as recommended in Appendix D Tree Protection Plan of the Arboricultural Impact Assessment,
- ~~iii) works as recommended in the Addendum to Arboricultural Impact Assessment, including section 5: Recommendations and Appendix 1 - Tree Protection Plan.~~

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: tree protection.

Planning Comment: The proposed changes are supported by the assessing officer as the Addendum to Arboricultural Impact Assessment relates only to the works that are sought to be deleted from the development.

45. Tree removal within the road reserve

This consent approves the removal of the following tree(s) within the road reserve (as recommended in the Addendum to Arboricultural Impact Assessment):

- ~~i) tree number 50 Bangalay Gum~~
- ~~ii) tree number 51 Swamp She Oak~~
- ~~iii) tree number 52 Tuckeroo~~
- ~~iv) tree number 54 Sydney Golden Wattle~~

~~Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.~~

~~Reason: public liability.~~

Planning Comment: The proposed changes are supported by the assessing officer as the Addendum to Arboricultural Impact Assessment relates only to the works that are sought to be deleted from the development.

62. Tree and vegetation protection

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, including trees numbered 5 (Cooks Pine), 6 (Chinese Elm), 13 (group of Swamp She-Oak), 14 (group of Brush Cherry), 15 (Paperbark), and 16 (Common Ash),
- ii) all trees and vegetation located on adjoining properties, including trees numbered 11 and 12 (Old Man Banksia),
- iii) all road reserve trees and vegetation, including tree numbered 10 (Umbrella Tree).
- ~~iv) all road reserve trees and vegetation as listed for retention in the Addendum to Arboricultural Impact Assessment.~~

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment ~~and the Addendum to Arboricultural Impact Assessment~~ prepared by Urban Forestry Australia.

The Certifying Authority must ensure that:

d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited.

Reason: tree and vegetation protection.

Planning Comment: The proposed changes are supported by the assessing officer as the Addendum to Arboricultural Impact Assessment relates only to the works that are sought to be deleted from the development.

110. Transport Service

A transport service providing access for residents of the Residential Care Facility to facilities and services as described in Clause 26(1) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004, is to be maintained throughout the life of the development. Such service to be provided by the aged care provider with parking for the subject vehicle(s) to be available on site.

Reason: To ensure that the operation of the premises is consistent with the requirements of SEPP HSPD 2004 and the subject approval.

Planning Comment: The proposed modification necessitates the inclusion of Condition No. 110, as recommended by Council's Traffic Engineering team, to ensure that the proposed shuttle bus transport service is provided to the residents of the facility for the life of the development.

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

Assessment - Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 101 Development with frontage to classified road)

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality

Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure

SITE DESCRIPTION

Property Description:	Lot 38 DP 7236 , 23 Bassett Street MONA VALE NSW 2103 Lot 2 DP 748426 , 33 Bassett Street MONA VALE NSW 2103
Detailed Site Description:	<p>The subject site consists of two allotments located on the southern side of Bassett Street, approximately 50m to the east of the intersection of Barrenjoey Road.</p> <ul style="list-style-type: none"> • 23 Bassett Street, Mona Vale - Lot 38 Sec F DP 7236 • 33 Bassett Street, Mona Vale - Lot 2 DP 748426 <p>No. 23 Bassett Street has a frontage of 15.24m along Bassett Street with a site area of 929m², and accommodates a single-storey dwelling.</p> <p>No. 33 Bassett Street has a frontage of 91.44m² to Bassett Street with a site area of 5574m², and accommodates a two-storey, 63 bed aged care facility known as Mona Vale House Nursing Home. No. 33 also accommodates a single-storey dwelling at the east of the site (formerly No. 25 Bassett Street). The existing facility provides 34 car parking spaces at the rear and an electrical substation is located in the the north western corner of the site.</p> <p>When combined, the site is regular in shape with a frontage of 106.68m along Bassett Street and a depth of 60.96m. The site has a surveyed area of 6503m².</p> <p>The site is located within the R2 Low Density Residential zone.</p> <p>The site is generally flat and falls away approximately 1m at the rear of the existing building.</p>

The site contains 10 prescribed trees and a further 21 non-prescribed/exempt trees.

Detailed Description of Adjoining/Surrounding Development

The adjoining property to the east No. 21 Bassett Street is occupied by a dwelling house. The adjoining property to the west No. 37 Bassett Street is occupied by a dual occupancy. Properties adjoining the rear of the subject site are occupied by dwelling houses (6, 12-18 Heath Street) and dual occupancies (8 & 10 Heath Street).

Adjoining and surrounding development is characterised by a range of residential development including dwelling houses, dual occupancies and residential flat buildings.

Map:



SITE HISTORY

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

- N0153/05 - Alterations and additions to existing building and change of use to a nursing home - Approved 26 July 2005.
- N0153/05 - Modification of Development Consent N0153/05 for alterations and additions to existing building and change of use to a nursing home - Approved 16 March 2007.
- PLM2019/0251 - A pre-lodgement meeting was held in relation to the development in December 2019.
- DA2020/0816 - Demolition works and construction of a Seniors Housing Development

(Residential Care Facility) - Approved 26 April 2021.

The application was referred to the NBLPP on 16 December 2020 with a recommendation for approval. The NBLPP deferred the determination of the application for the following reason:

"1. To allow the applicant to explore alternate means of motorised and pedestrian access through the road reserve along Bassett Street and Barrenjoey Road, with a view to complying with the gradient requirements of SEPP HSPD clause 26(3). Alternatively, a revised Clause 4.6 written request is required to further justify the non-compliance as the Panel does not consider that the purpose of the clause is only to provide access for motorised wheelchairs."

In response, the applicant provided an amended proposal including a new pedestrian access path between the site and Barrenjoey Road, in accordance with the relevant provisions of SEPP HSPD. The amended proposed was re-notified and referred to the relevant Council referral bodies. The application was referred back to the NBLPP and subsequently approved on 26 April 2021.

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 DA2020/0816, 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>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The proposed modification is minor in extent, being limited to the deletion of the access pathway. There is no change</p>

Section 4.55(1A) - Other Modifications	Comments
	to the approved built form and minimal impact to surrounding properties.
<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 development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/0816 for the following reasons:</p> <p>The consent as proposed to be modified is substantially the same development as that for which the consent was originally granted. The proposed development retains the residential care facility use and does not alter the intent of the lot to be developed. The proposed modification involves the deletion of the access pathway only. As such, the development remains materially the same as originally approved.</p> <p>As such, the modified application is “substantially the same development” as the originally approved development and therefore may be considered under Section 4.55(1A).</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 development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of	(i) Environmental Impact

Section 4.15 'Matters for Consideration'	Comments
the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 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 10/08/2022 to 24/08/2022 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 without 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. All previous conditions from this Section are still applicable.</p>
NECC (Development Engineering)	<p>Supported with conditions.</p> <p>The proposed modifications to the provision of civil works in the public</p>

Internal Referral Body	Comments
	<p>road have been reviewed and the removal of the proposed elevated pedestrian ramp to Barrenjoey Road is supported. Also the requirement to upgrade the footpath between the site and the bus stops and upgrade the bus stop is also supported. The removal of the requirement to delete the upgrading of the footpath along the frontage of the site is not supported as the removal of the existing driveways and provision of the new driveways warrants the reconstruction of the footpath as part of the works.</p> <p>Development Engineering support the proposal subject to the amendment to condition 20 of consent DA2020/0816 as follows:</p> <p>20. Submission Roads Act Application for Civil Works in the Public Road</p> <p>The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include Engineering plans for the design of drainage pits and pipe connection from the site into the existing Council drainage system in Bassett St, 3 new vehicular crossings, reconstruction of concrete footpath and reconstruction of the redundant laybacks to kerb, footpath and turf and replacement street tree planting which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1, the concept engineering plans by ACOR Consultants, drawing number SY140363 C3.01 Issue C dated 29.10.20. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:</p> <ol style="list-style-type: none"> 1. The vehicular crossing width at the boundary for the below ground car park and loading dock shall have a maximum width of 8.0 metres and the profile is to be in accordance with Council drawing Normal Low. 2. The vehicular crossings for the entry and exit for the ambulance shall be 3.0 metres wide and the profile is to be in accordance with Council drawing Normal. 3. The existing driveway crossing servicing the current development is to be modified to suit the approval. 4. All redundant laybacks shall be removed and reinstated to kerb and gutter, footpath and turf. 5. Removal of the existing kerb, gutter and concrete footpath and provision of new kerb and gutter and 2.0 metre wide concrete footpath fronting the development site between 21 Bassett St and the existing driveway crossing servicing 37 and 39 Bassett St. 6. Any proposed pedestrian connections from the site to the public footpath fronting the site. 7. A pit and pipe drainage system within the public road in Bassett St shall be proved for the connection of the proposed drainage system.

Internal Referral Body	Comments
	<p>8. All existing and proposed electrical and telecommunications servicing the site and in the adjacent road reserve are to be located underground.</p> <p>9. All public utility services adjustments are to be detailed with concurrence from the relevant service authority if adjustment is required with costs borne by the applicant.</p> <p>The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.</p> <p>An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.</p> <p>Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.</p>
Road Reserve	<p>Supported with conditions.</p> <p>No objection to the removal of the 1:14 ramp and associated works.</p> <p>Development Engineering Team to amend condition and requirements for a s138 application for civil road works driveways, footpath and private pathway connections to Council's footpath network.</p> <p>Application to maintain off road shared cycleway/pathway.</p>
Traffic Engineer	<p>Supported with conditions.</p> <p>There is no traffic engineering objection to the deletion/removal of the conditions as described in the Statement of Environmental Effects. As outlined in the Statement of Environmental effects, SEPP Housing requires that residents of the care facility must have access to a transport service. While it is noted that the developer intends to provide a transport service for residents of the facility it is considered appropriate that an ongoing condition be added to the consent to that effect to ensure that this service remains available throughout the life of the development</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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 (Housing for Seniors or People with a Disability) 2004

Note: Despite being repealed and replaced by SEPP Housing, SEPP HSPD remains applicable to the subject development under the savings and transitional provisions of SEPP Housing.

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) as the development is for a Residential Care Facility.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment: The proposal does not modify the design of the development with the exception of the proposed deletion of the required pedestrian access pathway. As discussed in this report, the existing footpath is considered to provide adequate pedestrian access to the bus stop on Barrenjoey Road. As such, the proposal does not alter the previous assessment of this control.

Chapter 2 – Key Concepts

Comment: The approved development remains largely unchanged by the subject modification and satisfies the key concepts for a Residential Care Facility.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. A suitable condition has been included in the previous consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP HSPD.

Part 1 - General

Development Criteria			
Clause	Requirement	Proposal	Complies

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 1 - General			
14	The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.	The modified proposal maintains suitable accommodation, access and recreational facilities for residents.	Yes
15	This Chapter allows for development on land zoned primarily for urban purposes for any form of seniors housing despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy.		Yes
18	Development allowed by this Chapter may be carried out for the accommodation of the following only: (a) seniors or people who have a disability, (b) people who live within the same household with seniors or people who have a disability, (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy. A consent authority must not consent to a development application made pursuant to this Chapter unless: (a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to above may occupy the building to which the application relates, & (b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919 , limiting the use of any accommodation to which the application relates to the kinds of people referred to above.	Subject to the previously imposed conditions.	Yes

Part 2 - Site Related Requirements

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that	The development will provide satisfactory access to services and facilities despite the proposed deletion of the access pathway.	Yes (subject to conditions)

Development Criteria			
Clause	Requirement	Proposal	Complies
	<p>residents may reasonably require, and</p> <p>(b) community services and recreation facilities, and</p> <p>(c) the practice of a general medical practitioner</p>	<p>The Mona Vale Town Centre contains retail, commercial, community and medical services, and is accessible via public transport with bus stops located a maximum of 180m from the site on Barrenjoey Road.</p> <p>The proposed private transport service will be provided for residents which involves a mini-bus being available on a permanent basis. A suitable condition will be imposed to ensure this means of access is provided and is maintained for the life of the development.</p>	
26(2)	<p>Access complies with this clause if:</p> <p>(a) the facilities and services referred are located at a distance of not more than 400 metres from the site or</p> <p>(b) there is a public transport service available to the residents not more than 400metres away.</p>	<p>An accessible path of travel along the existing footpath of Bassett Street and Barrenjoey Road provides access to the north and south bound bus stops on Barrenjoey Road. The required travel distance from the site is approximately 145 metres to the south bound bus stop and 180 metres to the north bound bus stop.</p> <p>The existing footpath complies with the maximum distance of 400m and with the overall average gradient requirement of 1:14. However, the footpath includes a 30m section with a gradient of 1:10 which does not comply with the sectional gradient requirements of cl 26(2)(i) & (ii). Despite this non-compliant section, the existing footpath is considered to offer a suitable access pathway for residents of the facility, noting the compliant overall travel distance and average gradient.</p> <p>Section 26(3) is considered to be a development standard and the applicant has provided a Clause 4.6 written request in relation to the variation. The applicant's written request is assessed under Clause 4.6 of this report, and is considered to adequately justify the non-compliance.</p>	No (see Clause 4.6)
27	<p>If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.</p>	N/A	N/A

Development Criteria			
Clause	Requirement	Proposal	Complies
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Water and sewerage infrastructure connections are available from Sydney Water assets.	Yes
29	<p>Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), (iii), and (v):</p> <p>i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development</p> <p>iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision,</p> <p>v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.</p>	The proposal does not modify the design of the development with the exception of the proposed deletion of the required pedestrian access pathway. As such, the proposal does not alter the previous assessment of cl 29.	Yes

Part 3 - Design Requirements

Division 1 - General

Clause 30 - Site Analysis

Pursuant to Clause 30 (1) of SEPP HSPD a consent authority must not grant consent unless the consent authority is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause.

Comment: The site analysis plan (Drawing A-01) and written summary considerations within the Statement of Environmental Effects were provided as part of the previous Development Application and

remain unchanged as a result of the modification.

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 3.

Comment: The proposed modification of the approved development is limited to the deletion of the approved pedestrian access pathway. As such, the previous assessment of compliance with the principles set out in clauses Division 2 of Part 3 remains unchanged.

Part 4 - Development standards to be complied with

Division 1 - General

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

Comment: The proposed modification of the approved development is limited to the deletion of the approved pedestrian access pathway. As such, the previous assessment of compliance with the development standards set out in clauses Division 1 of Part 4 remains unchanged.

Division 2 - Residential care facilities - standards concerning accessibility and usability.

Development standards concerning accessibility and useability for residential care facilities are not specified in this Policy. For relevant standards, see the Commonwealth aged care accreditation standards and the Building Code of Australia. The applicant has previously provided a BCA capability assessment (BCA Capability Statement dated 22 April 2020) to demonstrate that requirements under the BCA are achievable, subject to conditions and construction certificate details.

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Division 1 General

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Division 2 Residential care facilities

Clause 48 - Standards that cannot be used to refuse development consent for residential care

facilities

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds set out in cl 48.

Comment: The proposed modification is limited to the deletion of the pedestrian access pathway, and does not alter the approved building height, density and scale, landscaped area and car parking provision. As such, the previous assessment of compliance with the standards set out in clauses Division 2 of Part 7 remains unchanged.

Chapter 4 – Miscellaneous

Comment: Clause 55 requires that the residential care facility include a fire sprinkler system, which addressed within the BCA Report and recommended conditions.

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

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 residential 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 residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
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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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
4.3 (2A) Height of Buildings:	8m above Flood Planning Level (RL12.85 AHD)	8.85m (RL13.7 AHD)	Unchanged	10.625% (0.85m)	No (as approved)
7.4 Floodplain Risk Management	RL4.91 AHD (Probable Maximum Flood)	RL5.0 AHD	Unchanged	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.4 Floodplain risk management	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	SEPP HSPD Section 26 Location and access to facilities
Requirement:	(3)(i) Gradient of no more than 1:12 for a max. length of 15m at a time (3)(ii) Gradient of no more than 1:10 for a max. length of 5m at a time
Proposed:	Gradient of 1:10 for a max. length of 30m

Assessment of request to vary a development standard:

Whilst the modification application will result in a variation to SEPP HSPD Section 26 Location and access to facilities development standard, the application does not strictly need to address the

requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications.

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the applicant has provided a Clause 4.6 written request and the merits of the variation have been assessed with regard to the provisions of SEPP HSPD Section 26 and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered section a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

Objectives of development standard

There are no underlying objective contained within SEPP HSPD Section 26. However, the intention of the control is to ensure access of a suitable distance and gradient is available between the development and public transport services via a *suitable access pathway*, which is defined as:

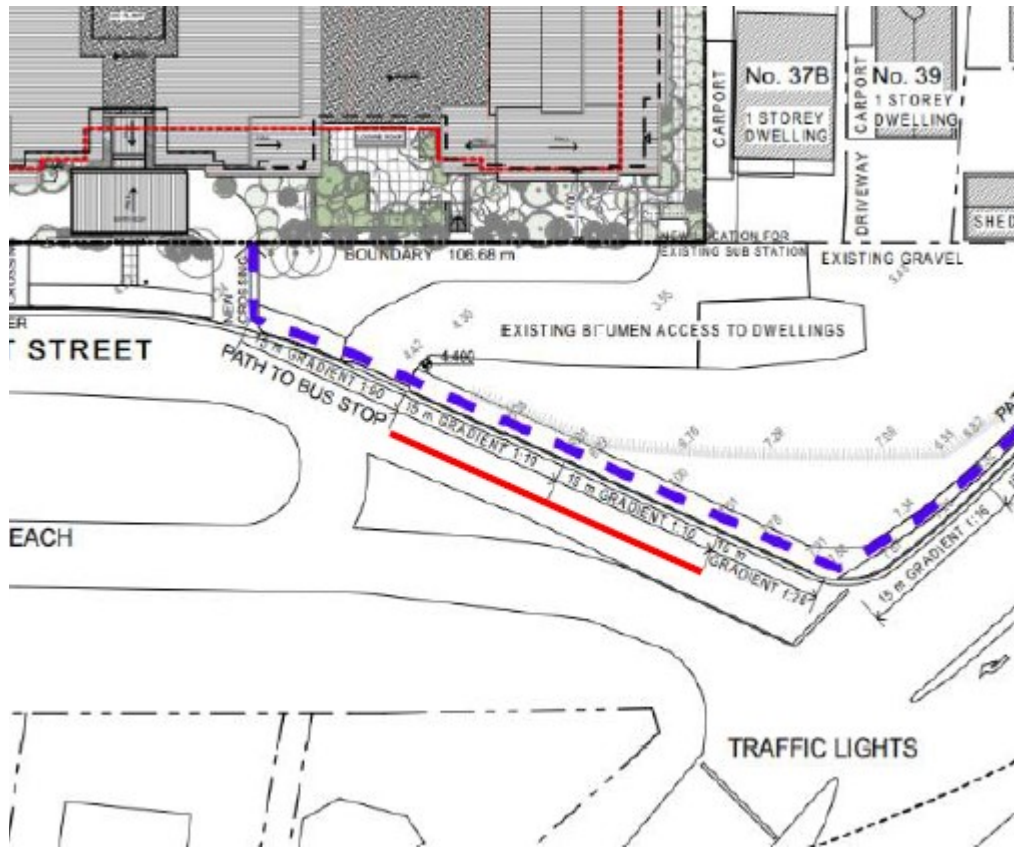
(a) a suitable access pathway is a path of travel by means of a sealed footpath or other simil

Comment:

The average grade of the existing footpath to the bus stop on Barrenjoey Road satisfies the requirements of cl 26(2), with an overall average gradient of 1:22 and a maximum length of 180m. The existing footpath includes a 30m section with a gradient of 1:10, which does not comply with the sectional grade requirements of cl 26(3)(i) & (ii). The result of the non-compliance is a grade difference approximately 0.86m over this 30m section of footpath, or less than 29mm per 1m travelled. Consistent

with the findings in *Malton Road Development Pty Ltd v Hornsby Shire Council [2018] NSWLEC 1265*, the existing footpath is considered to achieve the desired outcome of cl 26 of the SEPP.

The non-compliant section of the existing footpath is shown on the below plan excerpt.



(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard,

The applicants written request argues, in part:

"There are sufficient environmental planning grounds to justify the proposed contravention of t

- *The proposed residential care facility is a high care facility whereby access to services or facilities by residents not available on site occurs primarily via an 8 seat minibus run by the aged care service provider. Residents have on-site access to 24 hour medical care, hairdressing/ nail and beauty services, meals, a cinema and a café from which papers, magazines and day to day consumables can be purchased.*
- *The current policy position, as prescribed by clause 94(1) of SEPP Housing, seemingly acknowledges the different access requirements associated with a residential care facility (as compared to those associated with independent living units) and no longer requires access to a bus stop. The proposed on-site facilities and the transport service meet the access requirements for residential care facilities as prescribed by SEPP Housing, as confirmed in the Statement of Compliance - Access for People with a Disability by Accessible Building Solutions dated 10th March 2022.*
- *The pathway is limited to a maximum length of 180m, less than half of the 400m maximum prescribed by clause 26 of SEPP HSPD.*
- *The existing pathway between the site and transport services has been utilised by visitors to the existing residential care facility on the site for many years without incident or complaint.*

- *The overall average gradient of the pathway between the site and transport services does not exceed 1:14.*
- *The Statement of Compliance - Access for People with a Disability, dated 1st December 2020, prepared by Accessible Building Solutions contains the following expert opinion:
We are of the opinion that the section of path at 1:10 would not adversely affect a person with a disability from using the path...*
- *There are no environmental impacts arising from the non-compliance of the standard.*

Approval of the variation would facilitate the orderly and economic use and development of the

Comment:

It is agreed that SEPP HSPD has been repealed by the new SEPP Housing since the approval of DA2020/0816, and that SEPP Housing cl 94 does not include any provisions requiring that residential care facilities incorporate a "suitable access pathway" to provide access to facilities and services. It is noted however, that the provisions of SEPP HSPD remain applicable and must be satisfied by the subject development based on the savings and transitional provisions of SEPP Housing.

The applicant's Clause 4.6 written request states that the occupancy of the facility is primarily high care patients, and that a significant proportion of the residents would not leave the facility independently. It is also noted that the approved facility provides various services for residents on site, in addition to a minibus transport service. As such, it is not anticipated that residents of the facility would regularly rely on the existing footpath or the previously approved access pathway to access public transport.

In the event that the existing Bassett Street footpath is used by residents of the facility, the 30m section exceeding the maximum gradient provisions under SEPP HSPD cl 26(3) would be unlikely to materially restrict the accessibility of the footpath, as discussed further below. In this regard, it is noted that the length (180m) and overall average gradient (1:22) of the existing footpath are substantially less than the maximums permitted under cl 26(2).

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, therefore satisfying cls 1.3 (c) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposed modification maintains the approved residential care facility, which provides for the housing needs of the community.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

N/A - The approved residential care facility provides for the housing needs of the community.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Comment:

N/A - The approved residential care facility provides for the housing needs of the community.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Pittwater 21 Development Control Plan

Built Form Controls

There are no built form controls under Section D9 of the Pittwater 21 DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.9 Mona Vale Locality

The proposed deletion of the pedestrian access path does not alter the development's consistency with the desired future character of the locality.

B4.22 Preservation of Trees and Bushland Vegetation

The required pedestrian access path through the Bassett Street road reserve necessitated the removal of 4 trees on public land. The deletion of the access pathway through the proposed modification will allow the retention of these 4 trees.

C1.5 Visual Privacy

The proposed modification will not result in any adverse privacy impacts, noting the previous resident objections to the pedestrian access path in relation to privacy/overlooking.

C1.24 Public Road Reserve - Landscaping and Infrastructure

The proposed deletion of works within the Bassett Street road reserve will negate the need for tree removal and duplication of infrastructure on public land.

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;
- Pittwater Local Environment Plan;
- Pittwater 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. Mod2022/0376 for Modification of Development Consent DA2020/0816 granted for Demolition works and construction of a Seniors Housing Development (Residential Care Facility) on land at Lot 38 DP 7236,23 Bassett Street, MONA VALE, Lot 2 DP 748426,33 Bassett Street, MONA VALE, 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
A-01 Site Analysis and Context Plan	Rev. B, 17 November 2020	Gartner Trovato Architects
A-02 Roof Plan	Rev. B, 17 November 2020	Gartner Trovato Architects
A-03 Basement Plan	Rev. B, 17 November 2020	Gartner Trovato Architects
A-04 Ground Floor Level	Rev. C, 3 February 2021	Gartner Trovato Architects
A-05 First Floor Level	Rev. B, 17 November 2020	Gartner Trovato Architects
A-06 Elevations - North & South	Rev. B, 17 November 2020	Gartner Trovato Architects
A-07 Elevations - East & West	Rev. B, 17 November 2020	Gartner Trovato Architects
A-08 Sections	Rev. B, 17 November 2020	Gartner Trovato Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Compliance - Access for People with a Disability	Rev. B, 10 March 2022	Accessible Building Solutions
Geotechnical Investigation	Rev. 2, 20 July 2020	White Geotechnical Group
Arboricultural Impact Assessment	February 2020	Urban Forestry Australia
BCA 2019 Capability Statement	Rev. 3, 22 April 2020	Philip Chun Building Compliance

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
DA-L01 Landscape Site Plan	24 March 2020	Trish Dobson Landscape Architecture
DA-L02 Tree Retention Plan	24 March 2020	Trish Dobson Landscape Architecture
DA-L03 Planting Plan West	24 March 2020	Trish Dobson Landscape Architecture
DA-L04 Planting Plan East	24 March 2020	Trish Dobson Landscape Architecture
DA-L05 Planting Schedule & Details	24 March 2020	Trish Dobson Landscape Architecture
Elevation, Section, First Floor Planter	24 March 2020	Trish Dobson Landscape Architecture

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	25 June 2020	Gartner Trovato Architects

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

B. Modify Condition 20. Submission Roads Act Application for Civil Works in the Public Road to read as follows:

20. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Engineering plans for the design of drainage pits and pipe connection from the site into the existing Council drainage system in Bassett St, 3 new vehicular crossings, reconstruction of concrete footpath and reconstruction of the redundant laybacks to kerb, footpath and turf and replacement street tree planting which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1, the concept engineering plans by ACOR Consultants, drawing number SY140363 C3.01 Issue C dated 29.10.20. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. The vehicular crossing width at the boundary for the below ground car park and loading dock shall have a maximum width of 8.0 metres and the profile is to be in accordance with Council

drawing Normal Low.

2. The vehicular crossings for the entry and exit for the ambulance shall be 3.0 metres wide and the profile is to be in accordance with Council drawing Normal.
3. The existing driveway crossing servicing the current development is to be modified to suit the approval.
4. All redundant laybacks shall be removed and reinstated to kerb and gutter, footpath and turf.
5. Removal of the existing kerb, gutter and concrete footpath and provision of new kerb and gutter and 2.0 metre wide concrete footpath fronting the development site between 21 Bassett St and the existing driveway crossing servicing 37 and 39 Bassett St.
6. Any proposed pedestrian connections from the site to the public footpath fronting the site.
7. A pit and pipe drainage system within the public road in Bassett St shall be provided for the connection of the proposed drainage system.
8. All existing and proposed electrical and telecommunications servicing the site and in the adjacent road reserve are to be located underground.
9. All public utility services adjustments are to be detailed with concurrence from the relevant service authority if adjustment is required with costs borne by the applicant.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

C. Modify Condition 39. Project Arborist to read as follows:

39. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

- i) works as recommended in section 5.3 Minimising Impacts on Trees to be Retained, including tree 5 (Cooks Pine), tree 6 (Chinese Elm), tree 10 (Umbrella Tree) in adjoining property, trees 11 and 12 (Old Man Banksia) within road verge, group 13 (Swamp She-Oak), group 14 (Brush Cherry), tree 15 (Paperbark), and tree 16 (Common Ash),
- ii) works as recommended in Appendix D Tree Protection Plan of the Arboricultural Impact Assessment,

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: tree protection.

D. Delete Condition 45. Tree removal within the road reserve to read as follows:

45. DELETED

E. Modify Condition 62. Tree and vegetation protection to read as follows:

62. Tree and vegetation protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees and vegetation within the site not approved for removal, including trees numbered 5 (Cooks Pine), 6 (Chinese Elm), 13 (group of Swamp She-Oak), 14 (group of Brush Cherry), 15 (Paperbark), and 16 (Common Ash),
 - ii) all trees and vegetation located on adjoining properties, including trees numbered 11 and 12 (Old Man Banksia),
 - iii) all road reserve trees and vegetation, including tree numbered 10 (Umbrella Tree).
 -
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on

Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site

- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment prepared by Urban Forestry Australia.

The Certifying Authority must ensure that:

- d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited.

Reason: tree and vegetation protection.

F. Add Condition 110. Transport Service to read as follows:

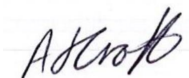
110. Transport Service

A transport service providing access for residents of the Residential Care Facility to facilities and services as described in Clause 26(1) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004, is to be maintained throughout the life of the development. Such service to be provided by the aged care provider with parking for the subject vehicle(s) to be available on site.

Reason: To ensure that the operation of the premises is consistent with the requirements of SEPP HSPD 2004 and the subject approval.

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

Signed



Adam Croft, Planner

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



Steven Findlay, Manager Development Assessments