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

1. INTRODUCTION

Dear Sir/Madam,

Reference is made to the development consent **DA2019/1419** granted on 29 April 2020 for the health services facility being a medical centre with basement parking, signage and landscaping at 49 Frenchs Forest Road East, Frenchs Forest, being legally described as Lot 7 DP1020015 (the Site).

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

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

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

- **Appendix 1** Development Consent **DA2019/1419**
- **Appendix 2** Architectural Plans
- **Appendix 3** Fire Services Letter
- **Appendix 4** Geotechnical Letter
- **Appendix 5** Hydrogeological Investigation and Analysis
- **Appendix 6** Preliminary Groundwater Quality Screening
- **Appendix 7** Structural Engineering Statement

2. SITE LOCATION AND CHARACTERISTICS

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

Existing attributes of the site are noted as follows:

- The site is situated within the Forest Central Business Park and affords an approximate area of 1,776m².
- The site exhibits a street frontage to Warringah Road to the south and the turning bay of the internal road to the north west.

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- Surrounding land uses in the immediate vicinity include:

- The site and the surrounding context are shown in **Figures 1** and **2** below.

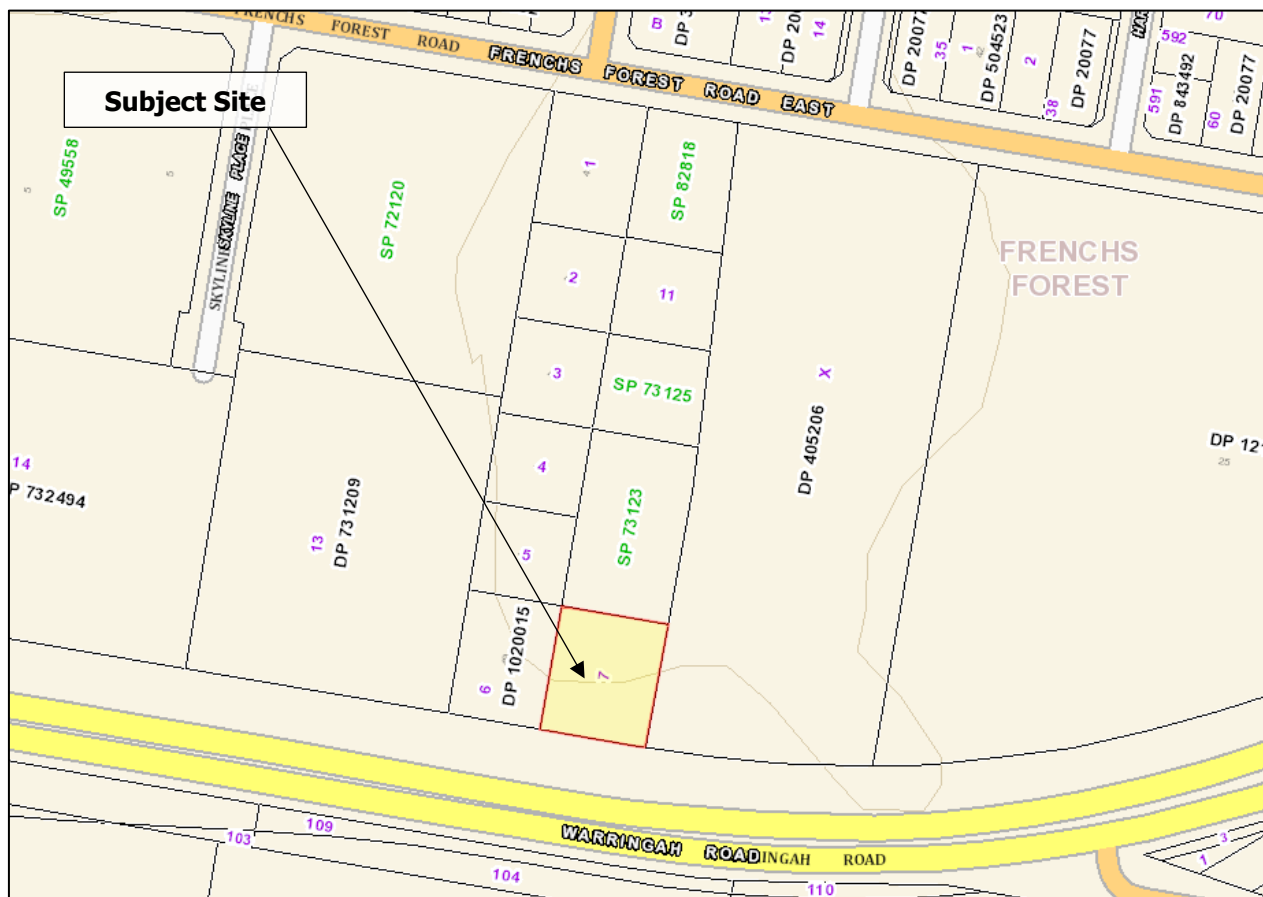


Figure 1 Cadastral Map (SIX Maps 2020)

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Figure 2 Aerial Map (Google Map 2020)

3. PROPOSED MODIFICATIONS

3.1 Proposed modifications and justification

The modifications sought to development consent **DA2019/1419** relate to the deletion of Conditions 2 and 15 and amendment to Condition 23, and addition of a fire service water storage tank on the roof level.

Condition 15 requires the basement area to be permanently tanked and structural details of the tanking to be submitted. It is noted that a Hydrogeological Investigation and Analysis (**Appendix 5**) and Preliminary Groundwater Quality Screening (**Appendix 6**) have been prepared by JK Geotechnics and JK Environments to assess the groundwater quality and undertake hydrogeological investigation of the site.

Based on the results of a seepage analysis, for the measured range of permeability of the weathered sandstone that seepage into the basement for the measured groundwater is expected to be in the order of 0.1ML/year to 0.9ML/year. When the groundwater levels were raised by 1m the estimated seepage into the basement was of about the same order of 0.1ML/year to 1ML/year.

As the basement will be excavated into the sandstone bedrock, the flow will occur through defects, such as joints and bedding parting, within the rock and will vary throughout the excavation due to the jointing present in different areas of the excavation.

Given that the analysed inflows are well below 3ML/year, the threshold prescribed by WaterNSW the works comply with the WaterNSW exemption from a Construction Dewatering License, as detailed in the WaterNSW Fact Sheet provided in Appendix B of the Hydrogeological Investigation and Analysis.

Accordingly, it is confirmed in the Geotechnical Letter (**Appendix 4**) that the basement is not required to be tanked and that a drained basement is suitable for this development. Therefore, it is requested that Condition 15 be amended to remove the requirement for the basement to be tanked.

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Condition 23 requires dilapidation reports and photographic surveys of all individual lots including the access easement and shared driveway of 49 Frenchs Forest Road East, Frenchs Forest to be provided to the Principal Certifying Authority (PCA) prior to the commencement of any works on site. Based on the requirement of Condition 23, dilapidation reports will need to be provided for all individual lots within the Frenchs Central Business Park, including those that are up to 10 lots (8 Buildings) away from the site. It has been determined that not all properties within the business park will be affected by the development, and as such it is requested that Condition 23 be amended to require dilapidation reports to be prepared only for adjoining lots that are directly affected by the construction works, and not all individual lots within the business park. This has been defined in the Hydrogeological Investigation and Analysis and further confirmed in the Structural Engineering Statement (**Appendix 7**).

In addition, due to a reduction of water volume in the Sydney Water mains, the subject modification involves the addition of an on site fire service water storage tank on the roof level. This water storage tank is required for fire service purposes due to the low water pressure provided on the site. As demonstrated in the Architectural Plans (**Appendix 2**), the proposed water storage tank does not exceed the existing approved building height and will be adequately screened with consistent screening elements already existent on the roof level and will therefore not impose any greater visibility from the public domain. The proposed water tank will be integrated with the roof form of the medical centre and will not detract from the appearance of the roof. The tank does not exceed the existing approved building height and has been designed as lower than this building height. Hence, the proposed addition of water storage tank is not anticipated to result in any adverse visual amenity impacts regarding views, visual bulk or privacy.

A Fire Services Letter (**Appendix 3**) has also been prepared to identify the need for the water storage tank for fire services purposes and confirm that the water tank has been designed in accordance with the relevant requirements. As addressed in the Fire Services Letter, due to the required size of the water storage tank, the operational requirements of FRNSW and site constraints, the only positioning that aligns with all relevant requirements is the rooftop, which is the only option that provides the fire brigade with a flooded booster assembly connection. As such, the proposed location of the water storage tank is deemed appropriate.

3.2 Proposed Conditions of Consent

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

To reflect the proposed modifications to the relevant conditions, text proposed to be deleted is indicated by 'strikethrough' text and text proposed to be added is indicated by **bold** text as follows:

Condition No. 1

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

a) *Approved Plans*

<i>Architectural Plans – Endorsed with Council's stamp</i>		
<i>Drawing No.</i>	<i>Dated</i>	<i>Prepared By</i>
<i>DA-011 – Rev. 8</i>	<i>09/12/2019</i>	<i>Team 2 Architects</i>
<i>DA-020, DA-021, DA-050, DA-104, DA-105, DA-106, DA-120, DA-200, and DA-201 - Rev. 4</i>	<i>04/12/2019</i>	<i>Team 2 Architects</i>
<i>DA-200 and DA0201 – Rev. 5</i>	<i>22/09/20</i>	<i>Team 2 Architects</i>
<i>DA-099 - Rev. 1</i>	<i>04/12/2019</i>	<i>Team 2 Architects</i>
<i>DA-100, DA-101, DA-102, and DA-103-Rev. 6</i>	<i>04/12/2019</i>	<i>Team 2 Architects</i>
<i>DA-202 - Rev. 3</i>	<i>04/12/2019</i>	<i>Team 2 Architects</i>
<i>DA-300, DA-301, - Rev. 5 6</i>	<i>09/12/2019</i> <i>22/09/20</i>	<i>Team 2 Architects</i>

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Condition No. 2

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

Other Department, Authority or Service	EDMS Reference	Dated
Water NSW	IDAS1121680	1 April 2020

Condition No. 15

~~The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.~~

Condition No. 23

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

- ⊕ *All the individual Lots including the access easement and shared driveway of 49 Frenchs Forest Road East, French Forest **adjoining lots that are directly affected by the construction works of the subject site***

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

4. STATUTORY PLANNING FRAMEWORK

4.1 Environmental Planning and Assessment Act 1979

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

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Table 1 Section 4.55(1A) – (3) Assessment	
Clause	Response
(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	The proposed deletion of Conditions 2 and 15, amendment to Condition 23 and addition of a water storage tank will not result in any environmental impacts.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The medical centre as it relates to DA2019/1419 as modified will be substantially the same development.</p> <p>The proposed modification does not involve changes to the use, built form, access or drainage of the development approved DA2019/1419.</p>
(c) it has notified the application in accordance with— (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and	<p>Pursuant to Clause 117(3A) of the <i>Environmental Planning and Assessment Regulation 2000</i> (EP&A Regulation), if the Section 4.55(1A) Modification relates to a development consent that was originally granted by a regional panel, the relevant Council are to notify or advertise the application.</p> <p>Given that DA2019/1419 was granted by the Sydney Planning Panel – North, which is a regional panel, notification of the subject Section 4.55(1A) Modification is required.</p>
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	The applicant is willing to address any submissions should they be received by Council during the notification period.
(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.	Refer to Section 5 of this Section 4.55 Statement.

Section 4.55(1A)(b) – Substantially the same

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

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

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

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

Whilst the proposal seeks to delete Conditions 2 and 15, amend Condition 23 and install a fire services water storage tank, these are not considered to be material or essential elements of the approved development which would constitute a radical change to the ultimate development outcome of the Site. This is further analysed in *Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280* which applies a quantitative and qualitative test to determine what qualifies a development as being “substantially the same”.

Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280 provides that a comparison of the development as approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development. The comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

Whilst the proposed modification seeks to delete Conditions 2 and 15, amend Condition 23 and install a fire services water storage tank, the modification is not considered to be substantial or comprise a critical element of the development. Further, from a qualitative perspective, the development retains its identity as a medical centre (cancer treatment centre) as a form of health services facility.

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

Section 4.55(3) – Section 4.15 and Reasons given by the consent authority for the grant of the consent

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

Table 2 Section 4.15(1) Considerations	
Section	Response
Section 4.15(1)(a)(i) any environmental planning instrument, and	Refer to Section 4.3 of this Statement.
Section 4.15(1)(a)(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent	No draft instruments are applicable to this modification.

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authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	
Section 4.15(1)(a)(iii) any development control plan, and	The relevant provisions of the Warringah Development Control Plan 2011 (WDCP2011) have been considered under DA2019/1419 . The proposed modifications will not result in any changes to the assessment undertaken against WDCP2011 as part of the original DA.
Section 4.15(1)(a)(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	N/A
Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	Refer to Section 4.2 of this Statement.
Section 4.15(1)(b)-(e)	Refer to Sections 4, 5 and 6 of this Statement.

4.2 Environmental Planning & Assessment Regulation 2000

This application has been prepared in accordance with the provisions of the EP&A Regulation. Clause 115 of the EP&A Regulation stipulates how a modification application must be "made". This DA satisfies the relevant criteria of the Regulation as follows:

- Clause 115 – The documentation required for the subject Section 4.55 Modification will be submitted to Northern Beaches Council electronically via the NSW Planning Portal.

Further, the proposed modification does not trigger 'Designated Development' pursuant to Schedule 3 of the EP&A Regulation.

4.3 Warringah Local Environmental Plan 2011

The *Warringah Local Environmental Plan 2011* (WLEP2011) is the primary environmental planning instrument that applies to the site.

The relevant provisions of WLEP2011 as they relate to the subject site are considered below:

4.3.1 Zoning and Permissibility

The site is zoned B7 Business Park under WLEP2011 (**Figure 3**). The objectives of the B7 Business Park zone are as follows:

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

The permissibility of the development was established under the original DA and the use of the development as a medical centre will remain unchanged as approved under **DA2019/1419**.

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

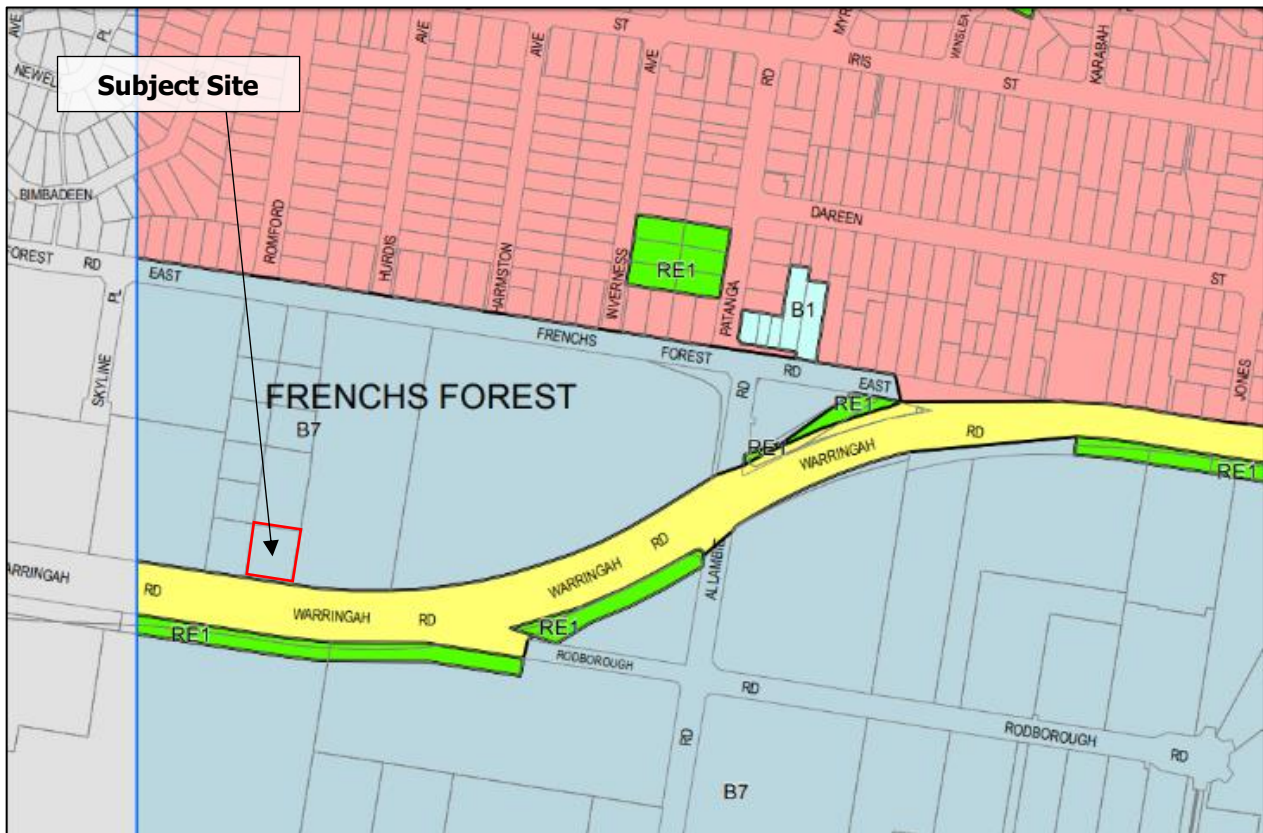


Figure 3 Zoning Map (NSW Legislation 2020)

5. LIKELY IMPACTS OF DEVELOPMENT

The key planning matters for consideration as they relate to the modified proposal remain consistent to the development approved under **DA2019/1419** and are addressed in the ensuing subsections

5.1 LAND USE

The proposed modifications will preserve the use of the site as a medical centre being a form of health services facility, consistent with **DA2019/1419**.

5.2 TRAFFIC AND TRANSPORT

There will be no change to traffic and transport arrangements under the subject application. Suitable access to the site will be available for construction purposes.

5.3 CIVIL ENGINEERING MATTERS

The proposal does not involve any changes to the civil engineering components of the subject site. The installation of the water storage tank is proposed for fire services purposes as demonstrated in the Fire Services Letter.

5.4 LIKELY IMPACTS OF DEVELOPMENT

The likely impacts of development in accordance with the requirements of Section 4.15(1) remain consistent with the development approved under **DA2019/1419** and have been considered above.

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6. SUITABILITY OF THE SITE FOR DEVELOPMENT

Given the nature of the proposed modification, the proposal is deemed suitable as it does not seek to modify the design of the approved medical centre or give rise to any undesirable environmental or amenity impacts. The proposal does not comprise any changes or additional elements which might cause the development as previously approved under **DA2019/1419** to be deemed unsuitable for the Site.

7. CONCLUSION

The proposal has been prepared after taking into consideration the following key issues:

- The development history of the site;
- Previously approved development;
- The context of the site and locality;
- The relevant heads of consideration under Section 4.55(1A) of the EP&A Act; and
- The aims, objectives and provisions of the relevant statutory and non-statutory planning instruments.

As detailed throughout this Statement, the proposed modifications will preserve the approved use of the Site and will not substantially change the approved built form. The proposal is therefore considered to represent a development outcome substantially the same as that previously approved under **DA2019/1419**.

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

Should you require additional information, please do not hesitate to contact the undersigned.

Yours faithfully,



Andrew Cowan
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