

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0126
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 38 DP 20461, 58 Forest Way FRENCHS FOREST NSW 2086
Proposed Development:	Modification of Development Consent DA2021/1814 granted for Demolition works and construction of a senior housing development.
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Khosrow Ataii Mojgan Ataii
Applicant:	Khosrow Ataii

Application Lodged:	18/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The Section 4.55(1) Modification application has been submitted at the request of Council as there was an error in the original consent DA2021/1814 in that it was missing a condition requiring a positive covenant to be placed on title restricting the occupation of the development to Seniors Housing or Housing for Persons with a Disability.

The relevant condition restricting the occupation of the development in accordance with the description as Seniors Housing or Housing for Persons with a Disability, will read as follows:

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that

the development is only permitted to be occupied by persons detailed as follows:

- (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.*

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and / or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue any Final Occupation Certificate.

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.

SITE DESCRIPTION

Property Description:	Lot 38 DP 20461 , 58 Forest Way FRENCHS FOREST NSW 2086
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Forest Way.

The site is irregular in shape with a frontage of 21.4m along Forest Way and a depth of between 59.8m and 51.3m. The site has a surveyed area of 1012m².

The site is located within the R2 (Low Density Residential) zone from WLEP 2011 and accommodates a single storey detached dwelling with a detached outbuilding and shed to the rear. A carport is located to the frontage with an access driveway along the northern boundary providing access to Forest Way. Steps a pedestrian path are provided along the southern boundary and a retaining wall has been erected along the street frontage within the road reserve.

The site is has a gentle slope and a number of mature trees are located throughout the site including three eucalypt trees within the frontage.

Detailed Description of Adjoining/Surrounding Development

Surrounding development consists primarily of one and two storey detached dwellings set back from the road in landscape settings interspersed with a dual occupancies, including (No. 17 & 17A Grace Avenue) and a townhouses developments located to the rear at No. 19 Grace Avenue and to the north-west at 27 - 33 Adam Street. Forest Way (a classified road) is located to the immediate east and Adams Street is located approximately 30m to the north.

Map:



SITE HISTORY

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Background

DA2021/1814

The abovementioned development consent was granted by Council on 23 February 2022 for a Seniors Housing Development comprising four (4) independent living three (3) bedroom dwellings with one level of basement parking for nine (9) cars.

Details of Modification Application

Under Section 4.55(1) of the EPA Act 1979, a consent containing an error or mis-description may be amended. The Northern Beaches Community Participation Plan does not require the notification of Section 4.55(1) modification applications.

The modification is to correct the Council error and add a standard condition (Condition No. 48B) requiring a positive covenant to be placed on title restricting the occupation of the development to Seniors Housing or Housing for Persons with a Disability. The details of the condition to be added are provided elsewhere in this report.

SEPP (Housing for Seniors or People with a Disability) 2004

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. The subject modification seeks to include the standard condition restricting the occupation of the development to Seniors or Persons with a disability in accordance with the SEPP (HSPD).

Consideration of error or mis-description

The condition is required to meet the the provisions of Clause 18, Chapter 3 of SEPP (HSPD) which outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent to restrict the kinds of people which can occupy the development.

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 2021

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 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0126 for Modification of Development Consent DA2021/1814 granted for Demolition works and construction of a senior housing development. on land at Lot 38 DP 20461,58 Forest Way, FRENCHS FOREST, subject to the conditions printed below:

A. Add Condition 48b Occupation of Seniors Housing or Housing for Persons with a Disability to read:

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (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.

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and / or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue any Interim / Final Occupation Certificate.

Reason: Statutory requirements. (DACPLB11)

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

Signed



Anne-Marie Young, Planner

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



Steven Findlay, Manager Development Assessments