

20 April 2022

The Chief Executive Officer
Northern Beaches Council

Dear Sir / Madam,

22 FRENCHS FOREST ROAD EAST, FRENCHS FOREST
Modification under Section 4.56 to Development Consent DA2018/1598 to
alter the approved development

1 Introduction

Development Application DA2018/1598 approved demolition works and construction of a new boarding house upon the subject site. It was approved by the NSW Land and Environment Court on 13 September 2019.

The approved development comprises:

- A 2-storey building with basement parking level.
- 18 boarding rooms plus 1 manager's residence.
- 6 car parking spaces, 4 motor bike spaces, 7 bicycle spaces.
- A communal laundry within the basement.

Modification to the development consent is sought to make modest changes to the approved development. The majority of the proposed modifications are of a minor or modest nature and are the result of further detailed design. The proposed changes do not affect the building height, form, bulk, overshadowing, view sharing, or privacy impacts and are worthy of Council's approval.

2 Proposed Modifications

The proposed modifications are depicted in the accompanying architectural plans by BKA Architecture. A detailed description of the proposed modifications is provided within the accompanying Change Register document by BKA Architecture. A summary of the proposed modifications are described below:

1. Garbage room has been relocated away from the building frontage to improve amenity and building presentation.
2. Landscaped (deep soil) area modified/reduced slightly by 6.9m².
3. Storage and bike racks included in basement: Bike rack relocated within basement near lift, and storage areas added.

4. Gate added for the basement at the top of the ramp without obstructing view for drivers, gates added to the fire stair coming from the basement. Stair reconfigured to accommodate gate which needs to open outwards within the boundary.
5. Balconies facing the adjacent roads added on level 1.
6. Sliding doors to balconies enlarged.
7. Light weight pergola added for the protection of balconies on level 1
8. Balustrade changes.
9. Window changes position size and treatments.
10. Improved courtyards proposed to individual rooms. Private small courtyards spaces for the units on ground floor have been added, deep soil area has decreased slightly on the west side as a result, however this is more than offset by the rear (north) landscaped area increase.
11. Room and furniture layouts have been amended, kitchens and bathroom types have been rationalised.
12. Communal laundry has been incorporated into the common room, moved from individual rooms and the room layout altered.
13. Available flat area on the roof noted for plant and future location of AC units and solar panels.
14. Various facade, window, door, and material changes; skylights for the units on the east facade of the building have been deleted.

The proposed modifications will necessitate a modification of condition 1 of the development consent to reflect the architectural plans that accompany this application.

STATEMENT OF ENVIRONMENTAL EFFECTS

3 Section 4.56 and environmental assessment considerations

The following is a Statement of Environmental Effects made under the provisions of Section 4.56 'Modification by consent authorities of consents granted by the Court' being modifications involving substantially the same development. Having regard to Section 4.56(1)(a) a consent authority may, modify the consent *granted by the Court* if (inter-alia):

(a) 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), ...'

In this regard, it is noted that:

- The nature of the proposed modifications are modest and within the scope of Section 4.56 being modifications involving substantially the same development for which consent was originally approved on the land.
- In response to 4.56 1A, the application has taken into consideration such of the matters referred to in section 4.15 (1) that are of relevance to the development the subject of the application.
- The following Statement of Environmental Effects considers the nature of the proposed modifications and the potential impact of the changes on environmental planning grounds.

ENVIRONMENTAL ASSESSMENT

4 Details of the property

The site is located 22 Frenchs Forest Road East, Frenchs Forest. It is legally described as Lot 86 in Deposited Plan 20077. The site has an area of approximately 721.7m². The land is developed with a single level residential building, a separate garage and landscaping on a corner allotment. The site adjoins a doctors surgery to the west, a public reserve to the north and neighbourhood shops to the east.

5 Warringah LEP

Planning considerations from the Warringah LEP 2011 that are relevant to the proposed modifications are noted and addressed as follows.

5.1 Zone

The proposal constitutes modifications to the approved boarding house on the land that is zoned R2 Low Density Residential. The proposal is permitted with Development Consent by virtue of the savings and transitional provisions within schedule 7 of SEPP Housing 2021.

Clause 2.3(2) of the LEP requires the consent authority to 'have regard to the objectives for development in a zone'. The proposed modifications represent modest changes to the approved development and are therefore assessed as being consistent with the approved development and the zone objectives.

The site is not affected by key environmental considerations like, for example, heritage, bush fire, biodiversity, flood, waterways, coastal planning, sloping topography, or acid sulfate soils.

5.2 LEP Clause 4.3 Height of buildings

Clause 4.3 of the LEP 'Height of buildings' is applicable to the assessment of the proposal. It establishes an 8.5m height limit applicable to the site. The proposed modifications do not propose to increase the approved building height and maintains compliance with this development standard.

5.3 Other relevant provisions of the LEP

5.3.1 LEP Clause 6.1 Acid sulfate soils

The proposed modifications do not involve any significant change or increase in the depth of excavation of the site that has been approved by DA2018/1598. There are no further matters for assessment relating to acid sulphate soil conditions triggered by the proposed modification and the provisions of the clause are satisfied.

5.3.2 LEP Clause 6.2 – Earthworks

The proposed modification involves no significant change to the approved excavation extent. The proposed modifications have considered the matters within clause 6.2(3) of the LEP and results in appropriate outcomes against these criteria. The proposed development satisfies the considerations within clause 6.2 and there are no further matters for assessment relating to earthworks triggered by the proposed modification.

State Environmental Planning Policies

5.4 State Environmental Planning Policy - BASIX

The proposed modifications trigger the need for an updated BASIX certificate which accompanies the application satisfying the SEPP. The accompanying architectural plans include an updated BASIX assessor stamp confirming the above.

5.5 State Environmental Planning Policy – Housing 2021

Boarding houses are no longer permissible with the R2 zone and Division 2 of the policy does not apply to the proposal. Rather the former provisions of the policy apply by virtue of schedule '7A Savings and transitional provisions', 'Section 2', 'General savings provision' states:

'The former provisions of a repealed instrument continue to apply to the following—

(d) states 'a development consent granted on or before the commencement date,'

The proposed modifications maintain compliance with the development standards. A summary of these is provided within the table below.

CONTROL	REQUIREMENT	PROPOSED	COMPLIES?
SEPP ARH			
Division 3 boarding houses			
CI 26	NA	NA	NA
CI 27	NA	NA	NA
CI 29			
1(a)	Density and scale expressed as a floor space ratio	NA	NA
1(b)	Floor space ratio	NA	NA
1(c)(i)	Floor space ratio 0.5 to 1 bonus is applicable to the land because residential flat buildings are permitted in the zone	NA	NA
2(a)	Building Height	No change	YES
2(b)	Landscaped Area	Landscaped (deep soil) area modified/reduced slightly by 6.9m ² . The modifications maintain a front setback and landscaped area within the street frontage that is compatible with the adjoining properties.	YES
2(c)	Solar Access	Compliance with solar access is maintained to the communal area.	YES
2(d)	Private Open Space	Private open space areas of 8.3m ² (deck) and (garden/lawn area) is provided adjacent to the communal living room. A private open space area of 8m ² is provided adjacent to the managers residence with the compliant minimum dimensions.	YES
2(e)	Car Parking	6 car parking spaces, (including 1	YES

CONTROL	REQUIREMENT	PROPOSED	COMPLIES?
		managers space, 1 accessible space and 1 car share space) are proposed in compliance with the standard.	
2(f)	Accommodation Size – 12m ² for single occupancy and 16m ² in other cases	The size of rooms range from approx. 16 to 22m ² in accordance with the standard. All double and single rooms are compliant.	YES
CI 30			
1(a)	if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	The approved communal living room of 22.5m ² is maintained on the north western side corner of the building and will receive appropriate solar access in compliance with the standard.	YES
1(b)	no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,	Rooms range from approx. 16 to 22m ² in accordance with the standard.	YES
1(c)	no boarding room will be occupied by more than 2 adult lodgers,	15 double occupancy rooms and 4 single occupancy rooms are proposed in compliance with the standard.	YES
1(d)	adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each room will be fully furnished and include private kitchen and bathroom in compliance with the standard.	YES
1(e)	if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	One managers residence is provided in compliance with the standard.	YES
1(f)	(Repealed)		
1(g)	if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	NA	NA
1(h)	At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	7 bicycle and 4 motorcycle Parking spaces are proposed in compliance with the standard.	YES
CI 30A	Character of the local area	No significant change proposed	Yes

6 Warringah DCP

6.1 DCP Principal Built Form Controls

Principal built form controls from the Warringah DCP relevant to the proposed modifications are noted and addressed as follows:

- Front building line – minor modifications to bin room, involving slightly reduced footprint and improved planting to screen the structure.
- Side boundary envelope – no change proposed.
- There are no adverse privacy or view impacts arising from the proposed modifications. The site is not adjacent to residential dwellings. Outdoor spaces are appropriately located and treated to maintain adequate privacy.
- Internal amenity – improved
- Landscaped (deep soil) area modified/reduced slightly by 6.9m². Previously addressed and SEPP Housing.
- Character as viewed from the streetscape and adjoining land - the size, shape, and configuration of the approved building form, as it presents to adjoining land does not significantly change as a result of the proposed modifications. The modifications will generally improve the developments presentation to adjoining land.

The proposed modifications will maintain appropriate building materials and colours, in keeping with the desired architectural characteristics and qualities of the approved boarding house.

7 Section 4.15 Matters for Consideration and 4.56 Modifications

The proposal has been assessed having regard to the matters for consideration pursuant to Section 4.15(1) and 4.56 of the Act, and to that extent, Council can be satisfied that:

- The nature and extent of the proposed modifications are modest and within the scope of Section 4.56, being modifications involving substantially the same development for which consent was originally approved on the land.
- The property/design can accommodate the proposed modifications whilst satisfying the relevant assessment considerations.
- The amenity outcomes are unchanged from that approved DA as the proposed changes do not affect the building form, bulk, overshadowing, view sharing, or privacy impacts.
- The proposed modifications will provide an improved development outcome for the future residents of the development without any unacceptable adverse impacts on the amenity of neighbouring properties.
- The likely impacts of the proposed modification have been appropriately identified and considered. The public interest will be served by the approval of the application.

8 Conclusion

The proposed modifications to Development Consent DA2018/1598 for changes to the approval, represent appropriate modifications.

The proposed development as modified is substantially the same development for which consent was originally granted. The proposed modifications are appropriate when considering the matters relevant to the property pursuant to Section 4.56.

It is assessed that the proposed development, as modified, is satisfactory and should be approved by Council.

Yours sincerely,



Michael Haynes
Director - BBF Town Planners