

23 November 2022

Nika Fomin
Manager, Planning & Environment Services
Built & Natural Environment
NSW Rural Fire Service
4 Murray Rose Avenue
Sydney Olympic Park
NSW 2127

Via email: records@rfs.nsw.gov.au

Dear Ms Fomin,

RE: 181 Forest Way, Belrose – your ref. DA-2017-02703-S4.55-1.

This letter is written on behalf of Regis Aged Care (Regis), as the owners of 181 Forest Way, Belrose (the site). Regis acquired the site with a court approval in place and have lodged a **s4.56 Modification Application** (Mod2022/0289) to make minor amendments to the approved plans in order to better-align with their service model and operational requirements. The proposed amendments **have no further impact** with regard to bushfire safety – as the modifications are largely internal, with the exception of changes to the car park access ramp and at grade parking within the Forest Way setback.

This letter follows discussions with Council officers regarding the updated Terms of Approval (ToA) which were issued by RFS on 29 September 2022. Whilst Regis is supportive of the intent behind the directions provided, the ability to comply with the re-issued ToA is limited by the court approval which requires compliance with the recommendations within the *Bushfire Protection Assessment Report by Travers Bushfire and Ecology* (**Attachment C**) and *Biodiversity Development Assessment Report by Cumberland Ecology* (**Attachment D**). It follows that we are seeking to secure a meeting at the earliest convenience with the relevant RFS officers. This letter should be read in connection with the following documents:

- **Attachment A:** RFS Referral Response Dated 29 September 2022.
- **Attachment B:** Conditions of Consent from Appeal No. 2020/137970
- **Attachment C:** Bushfire Protection Assessment Report by Travers Bushfire and Ecology
- **Attachment D:** Biodiversity Development Assessment Report by Cumberland Ecology
- **Attachment E:** Annotated Proposed plans by Morrison Design Partnership
- **Attachment F:** S4.56 Summary of Changes by Morrison Design Partnership

Planning History

DA2018/1654

On 22 October 2020, in the case of *Chriroseph Pty Ltd v Northern Beaches Council* (Appeal No. 2020/137970) the NSW Land and Environment Court (the Court) upheld an appeal in relation to DA2018/1654, by way of an agreement between parties for a new residential aged care facility (RACF) comprising 105 beds in 100 rooms over basement parking. Regis intend to construct and operate this development within the lifetime of the consent. A copy of the Court conditions of consent are provided at **Attachment B**.

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Mod2022/0289

On 27 June 2022 a section 4.56 application was lodged to modify consent DA2018/1654. The modification is still under assessment and seeks changes to the approved plans to allow for minor refinement of internal layouts, back-of-house and parking facilities in the basement and the provision of 4 additional visitor car parks within the front setback. These modifications are proposed to meet Regis' model of care following their purchase of the site. A copy of the proposed modifications and a summary of the proposed changes are provided at **Attachment E** and **Attachment F** respectively.

Court Approval

Bushfire Mitigation

The Court Judgement from *Chrioseph Pty Ltd v Northern Beaches Council* (Appeal No. 2020/137970) states at paragraph (12) that the relevant bushfire experts from both sides agreed that the amended bushfire report prepared by John Travers (dated September 2020) (**Attachment C**) reflects the requirements of PBP and that there is no risk to no. 179 Forest Way.

Accordingly, Condition 2 of the Court consent expressly approves all recommendations and requirements contained within Bushfire Protection Assessment Report by Travers Bushfire and Ecology (**Attachment C**), and Condition 7 of the Court consent relates to Bushfire mitigation:

7. Compliance with Bushfire Consultants Recommendations

All bushfire related measures are to be implemented at the appropriate stage of development in accordance with the approved Bushfire Protection Assessment Report as revised by Travers Bushfire and Ecology dated September 2020 and specifically:

1. At the commencement of building works and in perpetuity the APZ, as depicted in Schedule 1 – Bushfire Protection Measures prepared by Travers bushfire & ecology ref: 18MORR02, dated 7/9/20, shall be managed as an inner protection area (IPA) as outlined within section 4.2.7 and Appendix 5 of Planning for Bush Fire Protection 2006
2. The provision of water, electricity and gas shall comply with Section 4.1.3 and 4.2.7 of PBP 2006.
3. The proposed access road on the southern aspect shall be constructed to 5.5m in width.
4. The proposed turning areas for emergency vehicles located on the northern and eastern elevations of the building shall be suitably designed to enable an MRV – Category 1 Tanker to turn around.
5. A Bush Fire Emergency Management and Evacuation Plan shall be prepared consistent with Development Planning - A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan December 2014 and Australian Standard AS3745 2010 Planning for Emergencies in Facilities.
6. The proposed building shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 Construction of buildings in bush fire-prone areas or NASH Standard (1.7.14 updated) National Standard Steel Framed Construction in Bushfire Areas – 2014 as appropriate and section A3.7 Addendum Appendix 3 of Planning for Bush Fire Protection 2006. The ground floor deck on the eastern façade is to comply with BAL 19.
7. A minimum 2.2m high radiant heat shield made of non-combustible materials shall be constructed along the northern property boundary for a distance of 60m. All posts and rails shall be constructed of non-combustible materials. The bottom of the fence is to be in direct contact with the finished ground level or plinth.
8. Landscaping of the site shall comply with the principles of Appendix 5 of Planning for Bush Fire Protection 2006.
9. Low bollard lighting will be provided on the southern side of the access road on the southern aspect ramp for fire fighter safety.

Reason: To confirm compliance with Planning for Bushfire Protection 2019.

Biodiversity

Condition 2 of the court consent expressly approves all recommendations and requirements contained within the Biodiversity Development Assessment Report (BDAR) by Cumberland Ecology 19/11/2019 (**Attachment D**)

In accordance with the BDAR, conditions 23, 24, 25, 26 and 27 of the Court Consent require the applicant to enter into a Biodiversity Offsets Scheme.

Re-issued RFS Terms of Approval

Regis are wholly supportive of RFS's intentions with the re-issued RFS ToA (**Attachment A**) however, the circumstances of the site and the extant court consent limit the ability to comply with the revised ToA and to operate the consent that has already been granted. The re-issued ToA require the entire site to be managed as an Inner Protection Area (IPA) with the exception of the outer 30m APZ to the east (to be managed as Outer Protection Area (OPA)).

The IPA requirement doesn't align with two of the court approved documents, being:

- Bushfire Protection Assessment Report by Travers Bushfire and Ecology; and
- BDAR by Cumberland Ecology

Further, the re-issued ToA also has implications for the operability of the consent when considering condition 7 and conditions 23, 24, 25, 26 and 27 on biodiversity offset commitments. Council are therefore unable to support the modification application until the inconsistencies between the re-issued Terms of Approval and the Court consent are resolved.

Conclusion

Given the circumstances of the site, and that **the proposed cl4.56 modifications have no further impact with regard to bushfire safety**, we respectfully request a meeting with the relevant officers to discuss and resolve matters pertaining to bushfire mitigation and biodiversity management which arise from the re-issued ToA.

Since the cl4.56 modification application is currently under assessment, we would welcome a meeting at your earliest convenience and look forward to receiving confirmation of your availability.

Should you have any questions, please do not hesitate to contact me on 0403 767 555.

Yours sincerely,



Gemma Bassett

Associate