

24 May 2022

Mr. Daniel Milliken
A/Manager Development Assessment
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attn: Mr. Daniel Milliken

Via email: council@northernbeaches.nsw.gov.au

Dear Mr. Milliken

RE: SECTION 4.56 APPLICATION TO MODIFY DEVELOPMENT CONSENT (DA2018/1654) AT 181 FOREST WAY, BELROSE

1 Introduction

We write on behalf of *Regis Aged Care Pty Ltd* (Regis) to request modification of development consent DA2018/1654, dated 22 October 2020, pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Section 115 of the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

The proposed 4.56 modification involves 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.

Given the scale of the proposed modifications and minimal further environmental impact, we are of the view that the existing cost of development should remain unchanged and therefore fees should be considered at a 50% rate in accordance with Clause 4.3 of Schedule 4 of the *Environmental Planning and Assessment Regulations 2021*.

This application should be read in conjunction with the following documentation:

- Updated Architectural Plans, prepared by Morrison Design Partnership Architects, at **Attachment 1**.
- Updated Traffic advice prepared by Traffix at **Attachment 2**.
- Updated Access advice prepared by Accessible Building Solutions at **Attachment 3**.
- Updated BCA Compliance Statement prepared by Blackett Maguire + Goldsmith at **Attachment 4**.
- Updated stormwater and civil advice prepared by ACOR Consultants at **Attachment 5**.

2 Background

On 22 October 2020, Consent Orders for DA2018/1654 were issued by the Land and Environment Court (LEC) by way of an agreement between parties under Section 34 of the *Land and Environment Court Act 1979* in the form of a deferred commencement consent, requiring approval for the development to be connected to a Sewer main. The consent is for "an aged care facility comprising 100 rooms including dementia ward, a café, staff areas, a kitchen and basement car parking".

3 The Site

The site is located at 181 Forest Way, Belrose, legally identified as Lot 3 DP 805710 and located within the Northern Beaches Council Local Government Area (LGA).

A site aerial is provided at **Figure 1**.

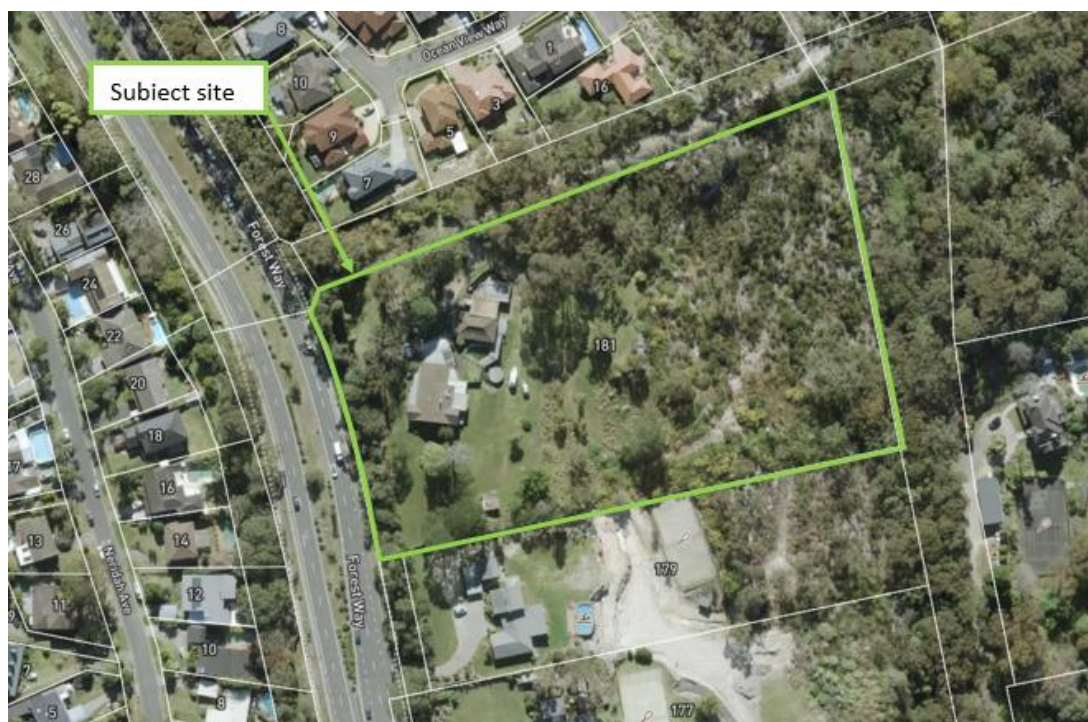


Figure 1 - Aerial Map (Source: Metro Maps)

4 Proposed Modifications

The proposed modifications are sought pursuant to Section 4.56 of the EP&A Act.

The proposed s4.56 modification is predominantly for changes to the internal floor plan layout and external parking area at ground level and includes:

- Basement plant areas rationalised to reflect Regis' functional requirements.
- Reconfigured basement level car parking area with no change to car parking numbers.
- Reduced excavation at basement (no excavation required beyond the building footprint).

Rearranged internal layouts with an overall increase of 3 bedrooms (no increase to bed numbers) and some reduction to internal courtyard sizes.

- Relocation of the top of the driveway ramp and shortening of the ramp (resultant gradient change).
- Increased visitor and accessible car parking at Ground Level (from 1 accessible park and 3 visitor parks; to 2 accessible parks and 6 visitor parks)
- Renumbering of conditions to remove duplication.

A summary of the proposed development is provided in the Table below.

Summary of Proposed Development			
Item	Approved	Proposed	Change
Site Area	21,170m ²	No change	No change
Bedrooms	100	103	3 additional
Beds	105	No change	No change
Parking	45	49	4 additional
Floor Space Ratio	0.31:1	No change	No change
Building Height	8.5-9.38m	No change	No change

The following provides the full detailed list of changes:

Lower Ground Floor Plan

- 2 Additional bedrooms.
- Nurse station, Office & Medication area adjusted
- Replanning of storage and service areas of basement (affected by carparking replanning)
- Private dining & Activity room adjusted. Cinema relocated to Ground Floor.
- Replanning of parking area - reduce excavation beyond building footprint - by 187m
- Ramp gradient changed (shorten length of ramp)

Ground Floor Plan

- 4 x Additional parking added incl. 1 additional disability
- Substation Relocated
- Retaining wall location adjusted and remove of 2 x existing palm trees.
- Top of driveway ramp relocated.
- Courtyard redesigned and slightly reduced
- Lift 1, 2 relocated
- Relocate bedroom no. 8&9
- Additional bedroom added to reduce overall number of double bedrooms.
- Reception, admin, manager office, sales/meeting room, staff station, office & spa, & hairdresser adjusted to Regis management concept.
- Reduced internal courtyard size
- Cinema relocated. (from Lower ground floor)

- Relocation of lounge and dining area closer to staff support area to meet Regis management concept
- Reduce terrace area by 168m².
- Stair location & layout adjusted - due to redesign of ramp and site frontage. Refer to the site plan for more details.
- Top of driveway ramp relocated.
- Add egress stair to allow for internal floor to floor access to meet Regis management concept.
- Turn gym & storage area to cinema, activities room & prayer room to meet Regis management concept. Skylight added to the activities room.

First Floor Plan

- Lift 1, 2 relocated
- Bedroom layout adjusted to accommodate lift relocation.
- Nurse station, Office & Medication area adjusted to Regis management concept.
- Reduced internal courtyard size
- Dementia wing bed number reduced to 14 beds.
- Relocate bedroom & lounge to meet Regis management concept.
- Relocate & replan egress stair to allow for internal floor to floor access to meet Regis management concept

Conditions

Proposed renumbering of conditions after "30 – for Submission of Engineering Plans (standard from development engineers)", in order to correct a numbering anomaly only.

5 Reason for Modification

Having purchased the site with an approval in place, Regis has been developing the design for the issue of Construction Certificate and has identified a number of design development refinements, efficiencies and modifications to reflect the *Regis Design Guideline* and support their operational requirements.

Car Parking

The basement car parking layout has been rearranged in order to remove the need for excavation beyond the building footprint. This has resulted in no nett loss of staff car parking as replanning of storage and service areas allowed further room internally for car parking.

A further 4 car parking spaces are provided in the visitor parking area at ground level (3 x visitor spaces, 1 x accessible space) shown in **Figure 2** below. As stated in the Traffic advice prepared by Traffix in **Attachment 2**, the increase in visitor spaces is considered acceptable and will ensure visitor parking demands are contained within the site.

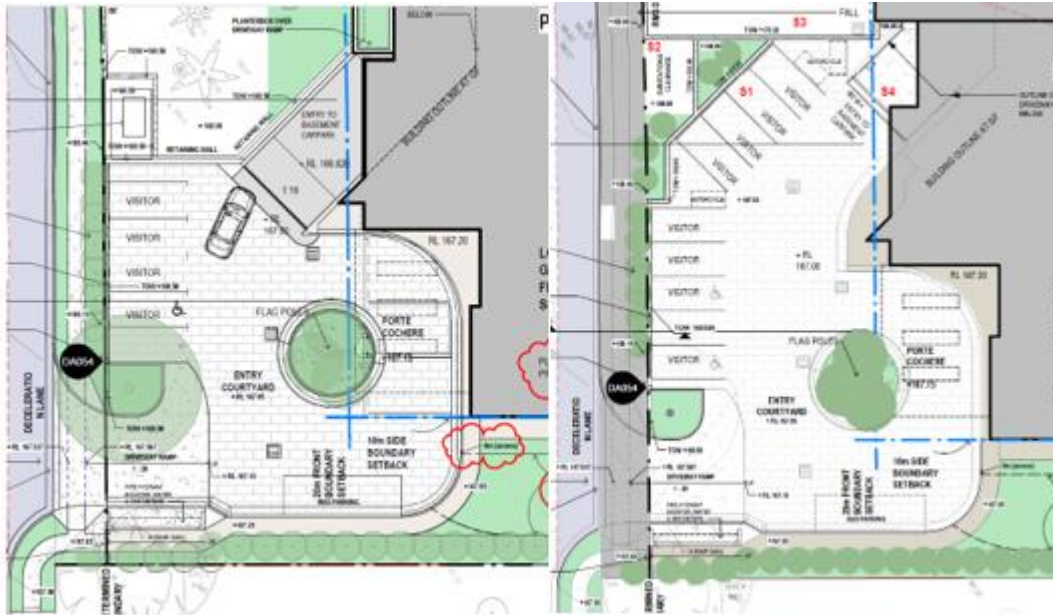


Figure 2 approved vs modification visitor car parking

Bedrooms

While it is proposed to increase the number of bedrooms from 100 to 103, the total number of beds is not proposed to increase. Rather a greater proportion of single bedrooms is being provided to align with Regis' operational model.

Floor Layout

The internal layout of Level 1 and 2 has been adjusted to reflect Regis' model of care.

6 Substantially the Same Development

Section 4.56 of the Act states that:

- 1) consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—
 - 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), and
 - b. it has **notified** the application in accordance with—
 - i. the regulations, if the regulations so require, and
 - 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
 - c. it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

- 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.*
(Our emphasis)

In relation to the material substance of the proposed modifications:

- The proposed modifications result in a development outcome that is quantitatively and qualitatively substantially the same as the original development.
- The fundamental characteristics and essence of the proposed development remain unchanged.
- The development remains consistent with the built form as approved.
- The modification does not alter the developments approved bulk or scale, with the proposed amendments being wholly contained within the approved building envelope.
- The modification to the Conditions of Consent is administrative in nature and will not alter the approved physical form of the approved building.

The proposed modification does not propose to alter the existing land use with majority of the proposed works to reconfigure internal areas to meet Regis's operational requirements.

Council will need to notify the application in accordance with subclauses b-d above.

7 Section 4.56(1A)

Under Section 4.56(1A) of the Act, the consent authority is required to take the following matters into consideration:

*"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".*
(Our emphasis)

An assessment under section 4.15(1) is provided in **Section 8**. The proposed changes sought in the subject modification do not give rise to any inconsistency with the reasons for determination of the original DA, namely:

- The land use remains unchanged and is therefore permissible subject to consent.
- In respect of cl 12(1)(a) of the LEP, the development remains consistent with relevant principles of development control in Part 4 for the following reasons:
 - In accordance with cl 40 'Housing for older people or people with disabilities', equitable access to support services is provided and complying wheelchair access is evident.
 - On the basis of the Access advice prepared by Accessible Building Solutions dated 12 April 2022 in **Attachment 3**, the requirements contained in Schedule 16 of the LEP are achieved.
- The modification is consistent with the relevant provisions of the SEPP (Housing) 2021.

- The modification complies with development standards set out in the B2 Oxford Falls Valley Locality statement, with the exception of building height and the front setback to Forest Way, however:
 - Building height remains as approved in the original Development Application.
 - The front setback to Forest Way remains as approved in the original Development Application.
- The modifications make no changes to massing, landscaping setbacks or views of the skyline when viewed from Narabeen Lagoon or Wakehurst Parkway and therefore continues to be low intensity and low impact in-line with the original assessment undertaken by Council. On this basis, it remains consistent with the desired future character of the locality.
- The proposed modifications have no further impact with regard to bushfire safety as the modifications are largely internal or to the west of the site away from the bushfire risk area.
- The proposed modifications with regard to Council's original assessment of the application are not significant and are limited to changes to visitor car parking numbers, reconfiguration of the access driveway into the car park and internal reconfiguration with no change to the overall number of beds provided. This is discussed further in **Section 8** below.

8 Section 4.15 Assessment

In determining an application for modification of a consent under Section 4.56, 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.

8.1 Integrated Development

The approved Development is classified as integrated development under the EP&A Act owing to the requirement for approval under:

- Section 100B of the *Rural Fires Act 1997*
Such approval is required in the case of residential development on bushfire prone land for special fire protection purposes (seniors housing being such a 'special purpose').
- Section 138 of the *Roads Act 1993* with respect to the new access to a classified road. There is no change to the location of the proposed driveway and no increase in the number of vehicles served.

8.2 New South Wales Biodiversity Conservation Act 2016

Land immediately to the north of the site (and within the northern side of the site) contains Duffys Forest Ecological Community, an Endangered Ecological Community under the *New South Wales Biodiversity Conservation Act 2016* (BC Act), as well as *Grevillia caleyi*, listed as Critically Endangered under the BC Act.

With the original application, the applicant provided a Biodiversity Development Assessment Report (BDAR) written by an Accredited Assessor meeting the minimum standards set out in the BAM (OEH 2017) and associated Operational Manuals.

In accordance with the BAM and the Warringah LEP, the proposal has avoided impacts including:

- No likely impacts to Duffys Forest EEC, which is now excluded from the APZ, will not be fragmented from other areas of vegetation by a fence and will be rehabilitated in accordance with the submitted Biodiversity Management Plan. Council's Natural Environment Unit was satisfied with this outcome.
- No impacts to existing *Grevillea cayeley* individuals on adjacent land by clarifying no works are required within the unformed road reserve along the northern boundary. The road reserve is only permitted to be access by the RFS during an emergency. The bushfire consultant confirmed that current conditions are sufficient for truck access and the proposal includes the installation of a locked gate which will only been accessed by RFS in an emergency. Council's Natural Environment Unit was satisfied with this outcome.

Proposed modifications are largely internal with the exception of some changes to the car parking and car park access ramp and will therefore have no further environmental impact in this regard.

8.3 State Environmental Planning Policies (SEPPs)

A list of SEPPs including:

- SEPP (Housing for Seniors or People with a Disability) 2004;
- SEPP (Infrastructure) 2007;
- SEPP 44 (Koala Habitat Protection); and
- SEPP 55 (Remediation of Land),

were considered under the original DA.

Recent consolidation of SEPPs has seen these consolidated as follows:

- SEPP (Housing for Seniors or People with a Disability) 2004 consolidated into the new SEPP(Housing) 2021.
- SEPP (Infrastructure) 2007 consolidated into the new SEPP (Transport and Infrastructure) 2021.
- SEPP 44 (Koala Habitat Protection) consolidated into the new SEPP (Biodiversity and Conservation) 2021.
- SEPP 55 (Remediation of Land) consolidated into the new SEPP (Resilience and Hazards) 2021.

The proposed modification application will not affect any of the above SEPPs applying to the site. Overall, the proposed modification:

- DA2018/1654 was made pursuant to WLEP 2000, which permits development for the purposes of housing for older people or people with disabilities on land within the B2 Oxford Falls Valley Locality. The DA was not made pursuant to SEPP (HSPD) 2004. The proposal was found to be consistent with the aims of the SEPP and consistent with the relevant provisions of the SEPP. The modification remains unaffected by the changes to the Seniors SEPP provisions which include restrictions to the permissible height of buildings and change to the definition of seniors. The modification will no have any effect on SEPP (Housing for Seniors or People with Disability).
- DA2018/1654 was referred to RMS and as a result of discussions between the proponent and the RMS it was agreed that a deceleration lane form part of any consent. RMS subsequently provided concurrence. There are no changes proposed to the deceleration lane that forms part of the original DA, and therefore the modification will not have any effect on SEPP (Transport and Infrastructure) for Development with Frontage to a Classified Road.

- DA2018/1654 was also referred to Ausgrid given that the site is within 5m of an overhead powerline. At the time of Council assessment, no response had been received however, no changes are proposed as to distances to overhead powerlines and therefore the modification will not have any effect on SEPP (Transport and Infrastructure) for Overhead Powerlines.
- The site was originally assessed as not being potential Koala Habitat, and therefore will not have any effect on SEPP (Biodiversity and Conservation) 2021 for Koala Habitat Protection.
- The SNPP report for DA2018/1654 concluded that since the site has been used for residential purposes for many years, the site poses no risk of contamination and is suited to its intended purpose, and therefore will not have any effect on SEPP (Resilience and Hazards) for Remediation of Land.
- Will not alter the approved exterior building envelope or cause any additional significant impacts to what was approved in regard to view loss, overshadowing, acoustic or visual amenity, other than what was approved in the original DA.
- Will not create any significant additional noise or vibration impacts other than what was considered and approved in the original DA.
- Will not alter the use of the site and will not introduce any new uses to the site as approved under the original DA.
- Will maintain a development as approved which is compatible with the character of Belrose. The proposed modification will maintain the approved architecturally designed building which integrates a contemporary built form to present a modest and coherent development outcome.

Based on the above considerations, the proposed modification does not give rise to further consideration of the applicable SEPPs.

8.4 Warringah Local Environmental Plan 2000

The proposed modification has been considered in terms of the relevant provisions of Warringah Local Environmental Plan 2000 (the LEP) below:

- **Locality B2 Oxford Falls Valley – Built Form Controls**
 - **Building height** – No change to the building height is proposed
 - **Front building setback** – The front setback remains unchanged. Further landscaping has been provided for further screening of the additional visitor parking spaces provided.
 - **Side and rear building setback** – No change to side and rear setbacks are proposed.
 - **Landscaped open space** – landscape open space equates to approximately 77% of the site.
 - **Nation park setback** – No change to setback from National Park boundaries.
- **Clause 29 – Standards which, if met, seniors housing cannot be refused –**
 - **Building height** – No change to the building height is proposed
 - **Density and scale** – No change to the FSR is proposed
 - **Landscaped area** – No change to the number of beds is proposed and the provision of landscaped area is well above the 25m² per bed required by Cl.29.
 - **Parking** – No change to the number of beds or staff is proposed and therefore there is no increased requirement for parking. The 30 car parking spaces for staff remains unchanged.

- **Visitor Parking** – No change to the number of beds or staff is proposed and therefore there is no increased requirement for visitor parking. The provision of visitor parking spaces has increased by 4 spaces (Ground Level).
- **Landscaped areas** – The requirement for deep soil area is calculated based on the size of the site which remains unchanged and therefore the total area required is 3,168m². The total landscaped area provided is 16,446m².
- **General Principles of Development Control**
General Principles of Development Control can be found in the table at **Attachment 6**.

8.5 Warringah Development Control Plan 2000

The proposed modifications will not change the development's consistency with any relevant controls in the Warringah Development Control Plan 2000 (the DCP).

8.6 Likely Impacts

The proposed modification will not introduce any new development or land use from that approved, but rather seeks to rearrange internal space, car parking and back of house areas to reflect Regis' actual operation requirements.

The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah LEP 2000 section of this report. No further environmental impacts are proposed as a result of this modification.

The development will provide seniors housing in the locality therefore, the development ensures that the housing stock caters for a broad cross section of the community. In terms of the provision of housing, the proposed development will not have a detrimental social impact on the locality.

The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed land uses.

Not only will the proposed modification not create any significant adverse additional environmental, social or economic impacts beyond those already considered by Council and the *Land and Environment Court* during the previous assessment of DA2018/1654; but also reduces the amount excavation beyond the building footprint than previously approved.

8.7 Suitability of the Site

The proposed modification does not change the suitability of the site for the proposed development. There are no anticipated further impacts on the surrounding natural and built environments, and the proposal is permissible under all relevant planning controls.

8.8 Public Interest

The proposed amendments will not adversely impact on the surrounding properties, public domain and will not alter the overall approved envelope, use or built form. It is therefore considered to be in the public interest.

Conclusion

As detailed in this request the proposed changes are consistent with the requirements under Section 4.56 of the Act. Specifically,

- The development as proposed to be modified remains qualitatively and quantitatively substantially the same development as that for which consent was originally granted.
- The proposal is consistent with relevant SEPPs, LEP and DCP provisions.
- The proposed modifications are consistent with applicable statutory planning controls and will not result in any environmental impacts.

We therefore conclude that the proposed modification should be approved.

Should you have any questions or wish to discuss any of this information in further detail, please do not hesitate to contact me on 02 8667 8668.

Kind Regards,



Ian Cady
Director