

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2016/0094
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<b>Responsible Officer:</b>	Alex Keller
<b>Land to be developed (Address):</b>	Lot 2 DP 604580, 22 Homestead Avenue COLLAROY NSW 2097
<b>Proposed Development:</b>	Modification of Development Consent DA2015/0931 granted for the Construction of a Residential Care Facility
<b>Zoning:</b>	LEP - Land zoned SP1 Special Activities
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Warringah Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Salvation Army Of NSW Property Trust
<b>Applicant:</b>	The Salvation Army NSW

<b>Application lodged:</b>	20/04/2016
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Residential - Seniors Living
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised, in accordance with A.7 of WDCP
<b>Submissions:</b>	0
<b>Recommendation:</b>	Refusal

### 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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

### SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 604580 , 22 Homestead Avenue COLLAROY NSW 2097
<b>Detailed Site Description:</b>	<p>The overall Salvation Army centre (the Centre) comprising Lot 1 DP572945, Lot 2 DP604580, Lot 100 DP806942 and Lot 2 DP787711, is located on the western side of Pittwater Road, has a total area of 14.64 hectares which includes a conference centre, sporting field, remnant bushland and the aged care sections of the Salvation Army development - "Elizabeth Jenkins Place", "Warringah Place" and "Trigg Village" in addition to ancillary internal roads and buildings. The development is contained within a "development area" of 5,424.9 sqm within Lot 2 DP604580.</p> <p>The centre is generally adjoined by the following:</p> <ul style="list-style-type: none"> <li>• West - The site adjoins the Council owned Public Reserve (Collaroy Reserve) and residential properties (detached dwellings) in Scotney Place and Duncan Crescent.</li> <li>• South - The site is adjoins Collaroy Reserve and Charles Hayman Lane and residential areas (detached dwellings) generally in Jamieson Parade, Hay Street and Pittwater Road.</li> <li>• North – Partly, the site adjoins the rear of residential properties (detached dwellings) which have frontage to the southern side of Homestead Avenue and partly it adjoins the rear of residential properties (detached dwellings) which have frontage to the southern side of Alexander Street.</li> <li>• East – The site adjoins Pittwater Road. Opposite Pittwater Road are detached residential properties. Also, part of the site adjoins residential properties.</li> </ul> <p>The site is within proximity of the following:</p> <ul style="list-style-type: none"> <li>• 125 metres from Collaroy Commercial Centre</li> <li>• 200 metres from Collaroy Beach and ocean pool</li> <li>• 200 metres from Collaroy Cinema</li> <li>• 330 metres from Collaroy Beach Ex-Servicemen's Club</li> <li>• 500 metres to Long Reef Golf Club and tennis courts</li> <li>• 400 metres to Long Reef Beach</li> </ul> <p>Adjacent development around the perimeter of the site is dominated by detached housing in a landscaped setting. A bushland reserve adjoins the western boundary that forms part of the headwaters for Collaroy Creek that flows across the southern part of the site.</p> <p>While the centre has frontage to Pittwater Road, no</p>

vehicular access is gained from that frontage and the primary pedestrian and vehicular access is from No.8 Homestead Avenue.

Map:



## SITE HISTORY

**Development Application No.DA2015/0931** for the construction of a residential aged care facility was approved by Council on 27 January 2016. This facility will be linked to the existing "Elizabeth Jenkins Lodge" aged care facility.

**Modification Application No.MOD2009/0263** for the modification of DA2007/0433 to delete the condition (No.15) relating to Section 94A contributions was refused by Council on 10 August 2010.

**Development Application No.DA2007/0433** was approved by Council on the 7 May 2009 for demolition of the existing 'Trigg Retirement Village', 'Elizabeth Jenkins Nursing Home' and Hostel and construction of an Aged Care Facility, Independent Living Units, Community Centre and associated carparking, new internal roads, landscaping and stormwater infrastructure. The proposal included a 102 bed residential aged care facility with 30 car spaces, 51 independent living units with 62 car spaces.

**Development Application No.DA2009/1271** was approved by Council on the 14 January 2010 for the demolition of 14 of 22 buildings within the "Trigg Village" area ("Area 3") and the removal of 55 trees. This DA has been commenced and works completed in preparation for the progress of DA2007/0433.

**Development Application No.DA2010/2047** for a independent living units for aged and disabled persons was approved by the Joint Regional Planning Panel on 20 April 2011.

**Development Application No.2013/0886** for alterations and additions to aged and disabled persons development was approved by Council on 31 July 2013.

**Development Application No.2014/0068** for alterations and additions to aged and disabled persons development was approved by Council on 24 January 2014.

**Pre-Lodgement Meeting No.2015/0076** for the Aged Care Facility (submitted for DA2015/0931) was held on 29 July 2015. The proposal is consistent with these notes with the exception that the Multi-purpose hall has been excluded and only a "maintenance" shed proposed instead.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks a Section 96(1A) modification of development consent No.DA2015/0931 for the "Construction of Residential Care Facility", approved by Council on 27 January 2016.

The applicant seeks to delete the requirement for payment of S94A Contributions, by way of Condition No.7 - Policy Controls, levied on the proposed development under Development Consent No. DA2015/0931. The current Section 94A contributions of \$133,945.00 are based on an estimated cost of development of \$13,394,458.00.

In this regard, the applicant submits that an exemption should be given for the 50 bedroom Residential Aged Care (RAC) Facility, on the basis that this development falls under Section 94E of the EPA Act, which is the list of development that is exempt from the payment of Section 94A Contributions.

The applicant has provided written advice to accompany the modification application which states that the Applicant is entitled to a variation of the Section 94A Contributions for reasons that the Salvation Army of NSW Property Trust is a not-for-profit organisation and due to social benefit and social (affordable housing) purposes associated with the development.

To revise the nature of the approved development, the original development application comprised the following works in detail:

1. Demolition of three maintenance sheds, a workshop, retaining wall and volleyball court.
2. Construction of a two storey Residential Care Facility (RCF) comprising:
  - 50 bedrooms (with ensuite) and storage within two floors
  - Basement carparking area for 32 cars (including two accessible spaces) and ambulance parking
  - Communal dining room, living room, sunroom/chapel, sitting room, multi-purpose room and
  - TV room allocated within the RCF
  - Staff room, offices and reception
  - Covered walkway connection to the "Elizabeth Jenkins Place (EJP)" RCF
  - Garbage room, store room and plant equipment room.
3. Construction of a new maintenance shed.
4. Internal road works comprising:
  - Removal of the internal road that turns south off the end of Homestad Avenue
  - Extend the existing internal road that services the EJP building to connect to the new basement carpark
  - Pedestrian access link to the new RCF building.
5. Landscaping works for bushfire protection zone, selected tree removal and replacement planting, internal fencing for courtyard and garden enclosure, paving and ancillary works



6. Drainage connections and ancillary site works.

7. Internal directional/identification signage (1m x 1.35) displaying the words "Pacific Lodge Aged Care".

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:  
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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2015/0931, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 96(1A) - Other Modifications</b>	<b>Comments</b>
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	<b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact on the natural and built environment.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2015/0931 in that the modification does not propose any changes to the building form.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development

# NORTHERN BEACHES COUNCIL

Section 96(1A) - Other Modifications	Comments
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	Control Plan.
(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.	No submissions were received in relation to this application. Notification of the modification was not required pursuant to Part A.7 Notification of the Warringah DCP 2011.

## Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition</p>

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Section 79C 'Matters for Consideration'	Comments
	<p>in the original consent/This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	Suitability for the proposed modification is addressed under Section 94A details and SEPP (Affordable Rental Housing) 2009 within this report.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Warringah Section 94A Contributions Plan 2015 and will result in a development which will create an undesirable precedent such that it would be contrary to the expectations of the community. In this regard, the development, as modified to delete S94A contributions, is not considered to be in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Strategic Planning (PDS)	MOD2016/0094 seeks consent to delete condition 7 of the consent for

Internal Referral Body	Comments
	<p>DA2015/0931, a Residential Care Facility. The condition requires the payment of a Section 94A (S94A) contribution as per Warringah Development Contributions Plan 2015 (the Plan). The proposal is considered to be unacceptable.</p> <p>Three points are made to support the request. These points are summarised below, with Council's response.</p> <p>1. The Trustees for the Salvation Army (NSW) Property Trust (TSA) is not-for-profit and should be excluded from S94A fees, as per the Plan.</p> <p>Response: The Plan excludes non-profit organisations <b>only</b> if the works are for a public purpose and on behalf of, or in partnership with Council. No evidence has been provided to show that the Residential Care Facility is being undertaken on behalf of, or in partnership with Council.</p> <p>2. Residents of the Residential Care Facility are likely to have low incomes, meaning the Residential Care Facility is 'affordable housing' under the Environmental Planning and Assessment Act 1979, and should be exempted from S94A fees, as per the Plan.</p> <p>Response: Clause 6 of the Plan exempts development 'for the sole purpose of affordable housing', as per the Ministerial Direction under S94E, dated 10 November 2006. The Ministerial Direction states that the terms within the Direction have the same meaning as they do in under the Environmental Planning and Assessment Act 1979 (the Act). The act states:</p> <p><b>"affordable housing"</b> means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations as are provided for in an environmental planning instrument.</p> <p>The applicant's Statement of Environmental Effects states that the development meets this definition, as it claims that 'the households/residents that will occupy the approved RCF on the site are likely to fall within the above definition of a <i>very low income household, low income household or moderate income household...</i>'</p> <p>It does not appear that evidence has been provided to demonstrate that the Residential Care Facility has been assessed as 'affordable housing', aside from the above claim of the 'likely' incomes of residents. This statement has not been accompanied by materials that would support the claim. As such, unless Development Assessment has determined that the Residential Care Facility meets the definition of 'affordable housing', this exclusion does not apply.</p> <p>It is noted that the applicant has specifically referred to the 'affordable housing' exemption test and the definition of 'affordable housing' with the Act. There are several exemption tests within the Plan. Applicants must address which exemption test they are seeking to apply and how they pass that test.</p>



Internal Referral Body	Comments
	<p>3. Residents of the Residential Care Facility will rarely use community infrastructure, and as such, the Residential Care Facility should not pay for additional community infrastructure via an S94A fee.</p> <p>Response: The Plan does not list 'low use of community infrastructure' as a reason for exemption from S94A fees.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP 55 - Remediation of Land

The modification relates to payment of Section 94A levy only and does not affect the previous considerations and assessment of SEPP 55.

### SEPP (Affordable Rental Housing) 2009

#### Affordable housing definitions pursuant to SEPP ARH

Note. The Act defines affordable housing as follows:

*affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.*

*(1) In this Policy, a household is taken to be a very low income household, low income household or moderate income household if the household:*

*(a) has a gross income that is less than 120 per cent of the median household income for the time being for the Sydney Statistical Division (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or*

*(b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.*

*(2) In this Policy, residential development is taken to be for the purposes of affordable housing if the development is on land owned by the Land and Housing Corporation.*

#### Comment:

Sufficient evidence has not been provided by the applicant to enable the development assessment required to address the Policy with respect to clause 1, 1(a) and / or 1(b) above.

## **Social Housing providers pursuant to SEPP ARH**

**social housing provider** means any of the following:

- (a) the Department of Human Services,
- (b) the Land and Housing Corporation,
- (c) a registered community housing provider,
- (d) the Aboriginal Housing Office,
- (e) a registered Aboriginal housing organisation within the meaning of the Aboriginal Housing Act 1998,
- (f) a local government authority that provides affordable housing,
- (g) a not-for-profit organisation that is a direct provider of rental housing to tenants.

### Comment:

It is accepted that the TSA (Salvation Army of NSW) is a not-for-profit organisation and complies with (g) above.

## **Clause 17 - Must be used for affordable housing for 10 years**

(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:

(a) for 10 years from the date of the issue of the occupation certificate:

(i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and

(ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider,  
and

(b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E

### Comment:

Sufficient evidence has not been provided by the applicant to establish the evidence required to address the Policy with respect to clause 17 (1) above in that the consent authority is required to ensure that the housing to be developed is subject to conditions to be maintained as affordable housing for 10 years in compliance with the SEPP ARH.

The proposal was not submitted as affordable rental housing pursuant to the SEPP and was not assessed for qualification as affordable rental housing. Specific intention to construct affordable rental housing was not discussed at pre-lodgement meeting PLM2015/0076 with Council on 29 July 2015. The applicability of Council's Section 94A Development Contributions Policy is listed in the PLM notes.

## **SEPP (Infrastructure) 2007**

The modification does not affect any matters relating to SEPP (Infrastructure) 2007 and no referral issues have been raised.

## **Warringah Local Environment Plan 2011**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes

zone objectives of the LEP?	Yes
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## Principal Development Standards

Principal Development Standards are not applicable to the modification as no change to the building or approved plans is proposed. The application solely relates to deletion of the condition to Levy Section 94A Contributions.

## Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.10 Heritage conservation	Yes
Schedule 5 Environmental heritage	Yes

## **Warringah Development Control Plan**

### Built Form Controls

Built Form Controls are not applicable to the modification as no change to the building or approved plans is proposed. The application solely relates to deletion of the condition to Levy Section 94A Contributions.

## Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Salvation Army Centre: Pittwater Road, Collaroy	Yes	Yes
Seniors Housing and Function Centre: Pittwater Road, Collaroy	Yes	Yes
F3 SP1 Special Activities	Yes	Yes
Salvation Army Centre (Senior's Housing and Function Centre), Collaroy	Yes	Yes

The Strategic Planning Division does not support the proposed amendments to Condition No.7 of DA2015/0931 which seeks to remove the levy for Section 94A development contributions applying to the Residential Aged Care Facility. The reasons are as follows:

- the Residential Aged Care Facility modification has not provided suitable evidence to satisfy criteria for exemption under the Warringah Section 94A Development Contributions Plan 2015, (the Plan) or any Section 94E Ministerial Direction.

In accordance with Clause 6 of the Plan, development that satisfies one (or more) of the following criteria is exempt from the payment of a Section 94A levy:

- (1) Development Applications and complying Development Applications whose total development cost is less than \$100,001
- (2) Applications lodged under Section 96 of the EP&A Act 1979 to modify condition/s of an existing consent
- (3) Development Applications and Complying Development Certificate Applications for public purposes as proposed by:
- a) Council, that involve the use of land classified as Community or Operational under the Local Government Act 1993 or as Crown Land under the Crown Lands Act 1989
  - b) Non-profit organisations, as defined by the Australian Taxation Office, on behalf of, or in partnership with Council
  - c) Government agencies
  - d) Public utility providers.

Also, on 10 November 2006 the Minister for Planning released a Section 94E Ministerial Direction which identified a range of developments for which a levy under Section 94A of the Act cannot be imposed. These include development:

- a) For the purpose of disabled access;
- b) For the sole purpose of affordable housing;
- c) For the purpose of reducing the consumption of mains-supplied potable water, or reducing the energy consumption of a building;
- d) For the sole purpose of the adaptive reuse of an item of environmental heritage; or
- e) Other than the subdivision of land, where a condition under section 94 of the Act has been imposed under a previous development consent relating to the subdivision of the land on which the development is proposed to be carried out.

The proposed Residential Aged Care Facility does not meet the selected exemption criteria as follows:

1. The applicant considers that the advice contained within this Practice Note issued July 2005 enables Council to waive levies for developments, if the proposal is a not-for-profit organisation only. This criteria only applies where the development is made *on behalf of, or in partnership with Council*. In this case, the proposal is not being built on behalf of or in partnership with Council and therefore this exemption cannot be legally applied.
2. The applicant has not provided evidence that the proposal was made for affordable housing. The development application was not submitted as an "affordable housing" development pursuant to SEPP (Affordable Rental Housing) 2009 and has therefore not been assessed or approved as such, with the required rental restrictions that are to be applied by a consent authority for approval of affordable housing development. Therefore the modification is insufficient to demonstrate this criteria.
3. The issue of 'low use' for community facilities by future residents is not canvassed by Council's Section 94A Plan to use as exemption criteria. The Department of Planning Practice Note, issued in July 2005, states that 'Council's policy on exemptions must be stated in the development contributions plan and, as far as possible, be specific about the types of facilities to be exempted. Alternatively, a council may state the criteria that will be used to determine an exemption or exclusion'. Whilst Strategic Planning agrees that the proposed genre that some developments should be considered for exemption for reasons of public benefit, to date, Council's Plan does not allow for the levy to be waived. Before the requested exemption can be made the Plan would need to be amended to list additional exemption criteria relating to Residential Aged Care Facilities. This could become a matter for consideration when the Plan is reviewed. A resolution of Council to waive the levy will not be sufficient, as this will not constitute an amendment to the Plan.

## Summary

# NORTHERN BEACHES COUNCIL

- The proposal to remove the Residential Aged Care Facility from the calculation of the Section 94A levy is not supported, and
- The proposal to delete the Section 94A contribution payments to reflect the carrying out of development on an independent (non-government) not-for-profit construction basis is not supported, because, in its current form, Council's Plan does not provide for the approval of these requests where the work is not in partnership with Council.
- The development was not submitted or approved as "solely for affordable housing" and the applicant has not demonstrated that the proposal satisfies SEPP (Affordable Rental Housing) 2009 to qualify for exemption. Since the proposal is not subject to those restrictions pursuant to the SEPP the exemption criteria cannot apply.
- The Plan does not permit deferred or periodic payment of Section 94A contributions (see Clause 13 of the Plan).

## 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council, as the consent authority REFUSE Modification Application No. Mod2016/0094 for Modification of Development Consent DA2015/0931 granted for the Construction of a Residential Care Facility on land at Lot 2 DP 604580, 22 Homestead Avenue, COLLAROY, subject to the reasons outlined as follows:

1. **Assessment - Environmental Planning and Assessment Act 1979 - Section 96(1A)**  
Pursuant to Section 94A(1) and Section 94E of the *Environmental Planning and Assessment Act, 1979* the proposed modification has not provided sufficient evidence to demonstrate exemption from the payment of Section 94A levy, in accordance with the *Warringah Section*



*94A Development Contributions Plan 2015.*

**2. SEPP (Affordable Rental Housing) 2000**

*Pursuant to SEPP (Affordable Rental Housing) 2009 the development has not been granted formal consent as Affordable Housing and therefore does not satisfy requirements for an exemption under the Warringah Section 94A Development Contributions Plan 2015.*

**3. Public Interest**

*Pursuant to the Warringah Section 94A Development Contributions Plan 2015, made under Environmental Planning and Assessment Act, 1979 the development is not being carried out "on behalf of, or in partnership with Council", and therefore in the public interest does not qualify with the necessary criteria for exemption from the payment of the Section 94A levy.*

**4. Warringah Section 94A Contributions Plan 2015**

*Pursuant to the Warringah Section 94A Development Contributions Plan 2015, made under Environmental Planning and Assessment Act, 1979 the proposed modification is not permissible for special exemption criteria by way of "limited use" facility as the Warringah Section 94A Development Contributions Plan does not include such exceptions.*

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

**Signed**

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**Alex Keller, Planner**

The application is determined under the delegated authority of:

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**Rodney Piggott, Development Assessment Manager**










**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

No notification map.

## ATTACHMENT C

Reference Number	Document	Date
 MOD2016/0094	22 Homestead Avenue COLLAROY NSW 2097 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	20/04/2016
 2016/122510	DA Acknowledgement Letter - The Salvation Army NSW	20/04/2016
 2016/131215	Report - Statement of Environmental Effects	27/04/2016
 2016/131199	Modification Application Form	27/04/2016
 2016/131203	Applicant Details	27/04/2016
 2016/156080	Strategic Planning Referral Response	17/05/2016
 2016/170194	Obsolete	31/05/2016
 2016/171713	Request for Withdrawal of Development Application - The Salvation Army NSW	01/06/2016
 2016/172779	Strategic Planning Referral Response	02/06/2016