



11 April 2023

Our Ref: DB/23-053

General Manager  
Northern Beaches Council  
725 Pittwater Road  
DEE WHY NSW 2099

**RE: Section 4.55 Modification of Development Consent No. DA2014/0714 – The Construction of Seniors Housing and Car parking within the 'Old Darby and Joan' Precinct at the RSL Anzac Village**

Dear Sir/Madam,

## **1. INTRODUCTION**

This report accompanies an application to modify development consent DA2014/0714 (“the consent”) for the construction of seniors housing and car parking within the Old Darby and Joan precinct of the RSL Anzac Village near the south-eastern corner of the War Veterans site off Veterans Parade, Narrabeen and identified as Lot 1 DP 774980.

This modification seeks approval for the removal of seven additional trees the need for which has emerged from the detailed design and construction process. The construction of the development has commenced including retaining walls and services diversions.

## **2. BACKGROUND**

Consent to DA 2014/0714 was granted consent by Warringah Council on 8 September 2014 approving the construction of 18 independent living units. The consent related to part of the site subject to DA 2009/1693 for the demolition of existing buildings and the construction of 67 self-contained dwellings on the site. The consent for DA 2014/0714 was conditional on the modification of DA 2009/1693 to reflect the changes necessitated by the approval of DA 2014/0714 over part of the site.

The units under construction under the consent are the last stage of development on that part of the site previously known as “Old Darby and Joan” and is now known as Labuan.

## **3. APPLICATION BASIS**

This application is made pursuant to section 4.55(1A) of the EP&A Act based on the following:

- The proposed modifications will result in minor environmental impacts that can be mitigated. These result from the detailed design process for retaining walls and service diversions and the process of on-site construction resulting in exposing tree roots.
- The proposed modifications are consistent with the original development application and the proposal is 'substantially the same development' as the development for which consent was originally granted. There is no change to the buildings approved or the civil works or landscaping works.

Relevant details of the proposed modification of the consent are provided below.

#### 4. LAND TO WHICH THIS MODIFICATION APPLICATION RELATES

This application relates to part of the land identified as Lot 1 DP 774980 off Veterans Parade and Lantana Avenue, Narrabeen being the land to which development consent relates. This land is part of RSL Anzac Village development which comprises a number of separate but inter-related precincts. Specifically, this application relates to that part of the site previously identified as "Old Darby and Joan" which has been the subject of renewal with new independent living seniors housing units known as Labuan.

#### 5. PROPOSED MODIFICATIONS

##### 5.1 Description

This application seeks the removal of seven additional trees located in the northern part of the development site. These are described in the report prepared by project arborist Urban Tree Management dated 16 March 2023 accompanying this application (**Appendix 1**). Urban Tree Management prepared the arborist report dated 24 June 2014 accompanying the development application to which the consent relates ("the initial report"). The arborist report dated 16 March 2023 finds that:

*When the initial report was prepared the final location of building footings and the requirement for batters during construction for work health safety were not known to the author. Many of the trees were much younger and smaller when the initial report was prepared and Trees 6 and 8 were expected to have been planted since. Subsequently these small trees, Trees TN1-5 and 7 and 8 require removal due to the extent of encroachment and subsequent root damage in their radial Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) per AS4970(2009), adversely impacting their viability and stability, respectively.*

*The trees are screened from view in many directions and form a scattered group. Replacement planting with advanced specimens of Eucalyptus racemosa – Scribbly Gum, should be undertaken at the end of the project to supplement the Landscape Plan.*

##### 5.2 Proposed Modification of Development Consent Conditions

It is suggested that this modification can be given effect by a change to condition 1A as it is currently drafted to allow for the removal of these Trees TN1-5 and 7 and 8 and to refer to the arborist report contained in **Appendix 1**.

Modification to condition 9 is requested to include a reference to the arborist report in **Appendix 1**.

## **6. PRESCRIBED FORM**

The prescribed requirements for a Section 4.55 application are set out in Section 100(1) of the *Environmental Planning and Assessment Regulation 2021*.

## **7. RELEVANT PROVISIONS OF SECTION 4.55**

### **7.1 Section 4.55(1A) Considerations**

Section 4.55(1A) of the Act states as follows:

#### **(1A) Modifications involving minimal environmental impact**

*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) 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*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require, or*
  - (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*
- (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.*

*Subsections (1), (2) and (5) do not apply to such a modification.*

In relation to 4.55(1A)(a), the proposal seeks the removal of seven additional trees. In the context of the site and the location and condition of the trees, the modification is considered to be of minor environmental impact.

In relation to 4.55(1A)(b), the proposed modification does not materially change the development for which the consent was originally granted. The development to which the consent, as modified, will relate is substantially the same as the development to which consent was originally granted.

In relation to 4.55(1A)(c) and (d), Northern Beaches Council may choose to notify the application and consider any submissions.

## 7.2 Section 4.55(3) Considerations

The proposed modification will not change the environmental impacts of the development as approved and remains the same as those outlined in the original application documentation and subsequent modification applications as discussed in the following section.

## 8. ENVIRONMENTAL EFFECTS

The relevant matters listed under Section 4.15(1) of the Environmental Planning and Assessment Act, 1979 are addressed below.

### 8.1 Statutory Planning Considerations

The original development of the site was approved in accordance with the statutory planning instruments and regulations applicable at the time of consent. The proposed modified development is consistent with the relevant planning controls. Compliance with applicable instruments is detailed in the tables below.

<b>Warringah Local Environmental Plan 2011</b>	
Permissibility	Yes
Aims of LEP and objectives of the zone	Consistent
5.10 Heritage	<p>Under the provisions of LEP 2011 the RSL Village site continues to contain 3 items of local heritage significance being:-</p> <ul style="list-style-type: none"> <li>• I30 – ANZAC War Memorial</li> <li>• I31 – Legacy Park</li> <li>• I32 – Ruins of Wheeler Homestead War Veterans Home</li> </ul> <p>The development site is not located within close proximity to any of the above heritage items.</p>
5.21 - Flood planning	The development site is not subject to flooding
6.2 - Earthworks	No additional impacts. Erosion and sediment controls in place
6.4 Development on sloping land	<p>The development is located on the following land slip risk classes as shown on the Land Slip Risk Map:-</p> <ul style="list-style-type: none"> <li>• Area A – slope &lt;50</li> <li>• Area D – Collaroy Plateau Area Flanking Slopes 50 to 150</li> </ul> <p>Landslip risk was considered as part of the development application and is not affected by this modification</p>
<b>Warringah Development Control Plan 2011</b>	
C5 Erosion and Sedimentation	Measures are in place to control erosion as per

	conditions of consent
D1 Landscaped Open Space and Bushland Setting	The additional trees to be removed are within the site and not generally visible from the surrounding public domain. Replacement plantings are proposed in the arborist report accompanying the application.
E1 Preservation of Trees or Bushland Vegetation	The proposed modification seeks approval for the removal of 7 additional trees on the site. (Refer to arborist report in <b>Appendix 1</b> ).
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	No significant impacts

## 8.2 Impacts on the Natural Environment

The additional trees removed are acceptable from a bushland perspective. The trees do not form part of an endangered ecological community, and they are not threatened species. A significant impact to the environment is considered to be unlikely.

There will be some minor additional environmental impacts as a result of the removal of additional trees. The trees are screened from view in many directions and form a scattered group. Replacement planting with advanced specimens of *Eucalyptus racemosa* – Scribbly Gum, are to be undertaken at the end of the project to supplement the Landscape Plan.

## 8.3 Bushfire Implications

The land to which the application relates contains bushfire prone land although the site of the proposed development is not bushfire prone land. The modification application relates to the removal of 7 additional trees and therefore will not alter the General Terms of Approval as issued by NSW RFS as part of the consent.

## 8.4 , Social and Economic Impacts

The proposed modifications will not result in any social or economic impacts that are significantly different from those associated with the original development application.

## 8.5 Suitability of the Site

The proposed modifications will not alter the suitability of the site for the development previously approved.

## 8.6 Submissions

Any relevant representations will need to be considered by the consent authority.

## 8.7 Public Interest

The proposed modifications are in the public interest in that it enables the approved development to occur in an orderly and efficient manner.

## 9. Conclusion

The proposed modifications will have a minimal environmental impact when considered in association with the assessment of the original application and development consent granted for the site. The development to which the application relates is substantially the same development as the development for which consent was originally granted (and as previously modified). In considering the proposed modification, it is noted that:

- the proposed modifications are permissible with consent in the zone, and are consistent with the provisions of the relevant planning controls.
- the proposed modifications are consistent and generally in accordance with the current approval for the site and will have no adverse impacts on the built environment.
- the proposed modifications are consistent and generally in accordance with the current approval for the site will not result in an unacceptable or significant adverse impact on the natural environment.
- the proposed modifications will not increase the site's currently approved development yield and will therefore result in no additional or adverse impacts on access or traffic.
- the proposed modifications are consistent and generally in accordance with the current approval for the site and no adjoining properties are expected to be adversely affected by the proposed modifications.

Having regard for the above, the modifications are considered to be in the public interest and will not give rise to any adverse social or economic impacts.

The modifications for which consent is now sought do not alter the original findings made in relation to the original DA (as modified) regarding the reasonableness and appropriateness of the proposal when considered in the light of the matters listed in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

If any further details are required, or if further justification is required in support of the requested modification, please do not hesitate to contact the undersigned.

We trust that you will find the application acceptable and look forward to a prompt and favourable determination.

Yours faithfully,

**BBC Consulting Planners,**



**Dan Brindle**  
**Director**

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