

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0077
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 7 DP 1020015, 49 Frenchs Forest Road East FRENCHS FOREST NSW 2086
Proposed Development:	Modification of Development Consent DA2019/1419 granted for the construction of a Health Services Facility, being a Medical Centre (Cancer Treatment Centre) with basement parking, signage and landscaping
Zoning:	Warringah LEP2011 - Land zoned B7 Business Park
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Forest Central Business Park Pty Ltd
Applicant:	Ascot Project Management

Application Lodged:	10/03/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	19/03/2021 to 18/04/2021
Advertised:	19/03/2021
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The Section 4.55(2) modification application seeks to amend the approved development under consent DA2019/1419. The proposed modifications include the following:

- Amend Condition 2:**
 Since the issue of the Water NSW General Terms of Approval, further detailed information has been obtained from the Hydrogeological Investigation and Analysis carried out on 3 July 2020, as part of the construction design and the Preliminary Groundwater Screening carried out on 31 July 2020. The findings from both investigations confirm that some of the GTA are no longer relevant and necessary. Therefore, the GTA should be modified and provided to Water NSW for review in light of this additional information.

A supporting geotechnical letter provided with the application confirms that the proposed development will have minor seepage between 0.04ML and 0.9ML per year which is significantly below the threshold of 3ML per year in accordance with the Water NSW published Fact Sheet "Exemptions - Construction Dewatering". As such, the modification application requests that the application be referred to Water NSW and seeks that Condition 2 be amended to reference the revised recommendations provided by Water NSW following the assessment of the subject application and the obligations in condition 15 deleted to remove the requirement to tank the basement.

- **Delete Condition 15:**

Findings from the supporting Geotechnical Letter confirm that a drained basement is suitable for the proposed development, and there is no requirement for, or benefit from, a tanked basement. Therefore, the application requests that Condition 15 be deleted to remove the requirement for the basement to be tanked.

- **Amend Condition 23:**

Condition 23 requires dilapidation reports and photographic surveys to be undertaken for all individual lots including the access easement and shared driveway of 49 Frenchs Forest Road East and be provided to the Principal Certifying Authority prior to the commencement of any works on site. The application states that not all lots within the business park will be affected by the development. The proposal seeks to amend the condition to require dilapidation reports and photographic surveys be prepared only for adjoining lots that are to be directly affected by the construction as well as the shared driveway, rather than all lots within the business park.

- **Water tank**

Due to the reduction of water volume in the Sydney Water mains within the locality, the application proposes the addition of a 100,000L on-site fire service water storage tank on the roof level.

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 the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Assessment - Integrated Development - WaterNSW (Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location)

SITE DESCRIPTION

Property Description:	Lot 7 DP 1020015 , 49 Frenchs Forest Road East FRENCHS FOREST NSW 2086
Detailed Site Description:	<p>The development site is Lot 7, DP 1020015, No. 49 Frenchs Forest Road East, which occupies a rectangular shaped area of some 1,774m² within the <i>Forest Central Business Park</i>. The site has a frontage (but no vehicular access) to the northern side of Warringah Road, Frenchs Forest.</p> <p>The site is currently used as storage as part of the Northern Beaches Hospital Stage 2 Road Network Enhancement project with construction vehicle access provided at the Warringah Road frontage.</p> <p>The surrounding areas to the north (opposite side of Frenchs Forest Road East) comprise traditional residential dwellings while the area to the west, east and south generally comprises a mixture of old and new industrial and commercial buildings. Interspersed within this are a mixture of schools, an aquatic centre, a hotel (under redevelopment), a drive-through fast food restaurant (KFC) and a small shopping precinct.</p> <p>Vehicular access to the site is provided from Frenchs Forest Road East via two driveways. The eastern driveway provides for entry and the western driveway provides for exit.</p> <p>The adjoining lot to the east at No.39 Frenchs Forest Road East has been approved for a new Hotel, Dan Murphy's bottle shop, 100 room motel and 271 onsite parking spaces. That development is now under construction.</p>

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **DA2019/1419** - on **29 April 2020**, the Sydney North Planning Panel granted consent for the construction of a health services facility, being a medical centre (cancer treatment centre) with basement parking, signage and landscaping.
- **Mod2020/0531** - On **21 October 2020**, Council granted consent to modify DA2019/1419, which involved the deletion of Condition 12 relating to works within existing easements.

The applicant lodged the current modification application under the provision of Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the EP&A Act). The modification application can be determined by Council because the proposed modification does not:

- proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
- proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
- meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.

Accordingly, under the provision of Clause 123BA of the Regulation the applicant can be determined under the Council's delegation.

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 DA2019/1419, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
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 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	<p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 where His Honours states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to</p>

Section 4.55 (2) - Other Modifications	Comments
	<p>support their argument that the modifications are substantially the same:</p> <p><i>The scope of a maximum modification of a consent without constituting assessment as a standalone application can be analysed through the ambit of Michael Standley & Associates Pty Ltd v North Sydney Council [2005] NSWLEC 358, whereupon Commissioner Mason P. found in relation to modification of development consents that the word “modify” was given the ordinary meaning of “to alter without radical transformation”. Therefore, the extent to which a consent may be modified is that to which the consent, as modified, is as approved without radical transformation or alteration.</i></p> <p><i>The development, as modified, is substantially the same development and will not result in a radical transformation of DA2019/1419 for the following reasons:</i></p> <ul style="list-style-type: none"> <i>• The modification remains a health services facility development being a medical centre, which retains the approved primary land use for health services facility purposes, and proposes no substantial change to this fundamental element of the approval;</i> <i>• There are no substantial quantitative changes proposed to the approved building bulk or scale including changes to the height, GFA, or setbacks of the building;</i> <i>• The function, form, operations, and importantly, public perception of the site, as a health services facility development, being primarily used for medical centre purposes, remains largely unchanged, with the reconfigurations retaining the original intent of the development as approved.</i> <i>• The design and presentation of the building has not been materially altered or transformed in any respect and any new building elements remain below the approved height of the building and appropriately screened by approved and proposed rooftop elements.</i> <p><i>In light of the above, the proposal as amended, is not considered to result in a “radical transformation” of the consent, as currently approved, satisfying the test pursuant to Michael Standley & Associates Pty Ltd v North Sydney Council [2005] NSWLEC 358.</i></p> <p><i>Whilst the proposal seeks to amend Conditions 2 and 23, delete Condition 15, and install a fire services water storage tank, these are not considered to be material or essential elements of the approved development which would</i></p>

Section 4.55 (2) - Other Modifications	Comments
	<p><i>constitute a radical change to the ultimate development outcome of the Site. This is further analysed in Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280 which applies a quantitate and qualitative test to determined what qualifies a development as being “substantially the same”.</i></p> <p><i>Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280 provides that a comparison of the development as approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development. The comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted). From both a qualitative and quantitative perspective the proposed development remains substantially the same.</i></p> <p><i>Whilst the proposed modification seeks to amend Conditions 2 and 23, delete Condition 15, and install a fire services water storage tank, the modification is not considered to be substantial or comprise a critical element of the development. Further, from a qualitative perspective, the development retains its identity as a medical centre (cancer treatment centre) as a form of health services facility.</i></p> <p><i>Therefore, the proposal, as amended, will be substantially the same development as approved, and satisfies the requirements for the application to be assessed and approved pursuant to Section 4.55(2B) of the EP&A Act.</i></p> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected	Development Application DA2019/1419 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
to the modification of that consent, 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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Environmental Plan 2011 and Warringah Development 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.

Section 4.15 Assessment

In accordance with Section 4.55 (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 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) –	None applicable.

Section 4.15 'Matters for Consideration'	Comments
Provisions of any planning agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&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&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and</p>

Section 4.15 'Matters for Consideration'	Comments
	proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/03/2021 to 18/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
The Owners Of Strata Plan 73125	49 Frenchs Forest Road East FRENCHS FOREST NSW 2086
Northern Beaches Cancer Care	Building 4 49 Frenchs Forest Road East FRENCHS FOREST NSW 2086

The following issues were raised in the submissions and each have been addressed below:

- Amendment to Condition 23 with regard to the requirement for a dilapidation report for nearby properties

The matters raised within the submissions are addressed as follows:

- **Condition 23**

Comment:

Condition 23 reads as follows:

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural

members and other similar items.

- *All the individual Lots including the access easement and shared driveway of 49 Frenchs Forest Road East, French Forest*

The submission expresses concern with the proposed amendment which seeks to have a dilapidation report prepared only for adjoining properties and the easement and common driveway. The submission expresses this concern on the following grounds:

"...that it fails to pass the required threshold of the social objectives as laid out in 1.3(b) of the EPA Act. At a factual level, Mod2021/0077 fails to address all of the externalities previously considered by the SNPP when it determined condition 23."

Clause 1.3(b) of the EP&A Act (*"the Act"*) reads as follows:

"to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,"

In response to the above, the application is supported by statement from the project structural engineer, who in addition to the geotechnical consultant, confirms a zone of influence of excavation, being defined as:

"A horizontal distance from the basement wall of twice the excavation depth."

All structures and services that lie within this zone of influence would be subject to dilapidation inspections. The proposed zone of influence, which includes adjoining lots, is considered acceptable and appropriately considers the social objectives as outlined in clause 1.3(b) the Act.

Notwithstanding the above, dilapidation reports will continue to be required to be undertaken for the shared driveway servicing all buildings within the property.

The proposed amendment to Condition 23 is considered acceptable and is supported.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
NECC (Development Engineering)	Condition 15 regarding the tanking of the basement reflects the requirements by Water NSW as listed in the General Terms of Approval dated 1 April 2020. The deletion of this condition will

Internal Referral Body	Comments
	<p>require concurrence by Water NSW.</p> <p>Second Review 14/04/2021 As previously commented concurrence from Water NSW is required before further assessment.</p> <p>Review 20/04/2021 Based on advice by planning that concurrence from Water NSW is assumed for deletion of Condition 15 Development Engineering has no objections.</p>
Strategic and Place Planning (Urban Design)	<p>The modification seeks consent for several modifications to DA2019/1419 namely a medical centre, one of which involves the addition of a rooftop water tank. It is assessed that the modification is substantially the same as that approved.</p> <p><i>The design and presentation of the building has not been materially altered or transformed in any respect and any new building elements remain below the approved height of the building and appropriately screened by approved and proposed rooftop elements. (Pg. 8 Statement of Environmental Effects by City Plan)</i></p> <p>The modifications to the rooftop area will not have any substantial impacts to the immediate context as viewed from the ground plane or impacts on view aspects to the wider urban context. As such the modification, being the addition of a rooftop water tank, can be supported.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response confirming their support for the development subject to conditions imposed under the parent consent. No further conditions are recommended.
Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	

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

State Environmental Planning Policy No. 55 – Remediation of Contaminated Lands (SEPP 55) establishes State-wide provisions to promote the remediation of contaminated land.

The SEPP 55 states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when land has been at risk.

Clause 7 of the SEPP 55 requires that a consent authority must not grant consent to a development if it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

In response, the applicant submitted a Stage 1 and Stage 2 Environmental Site Assessment, prepared by JKE Environments, as part of the approved development application. The report concludes that:

“the site is suitable for the proposed development and that potential risks associated with contamination at the site are low and further investigation (or remediation) is not considered to be required”.

The modification works proposed under the subject application are unlikely to alter the findings and conclusions of this report. Accordingly, the land is considered to be suitable for the development subject to conditions imposed as part of the approved development application.

SEPP (Infrastructure) 2007

For the purpose of this development, the proposed medical centre is defined as a 'Health Services Facility' which is permissible with consent within the B7 Business park zone.

A **health services facility** is defined as a facility used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes the following:

- (a) day surgeries and medical centres,
- (b) community health service facilities,
- (c) health consulting rooms,

- (d) facilities for the transport of patients, including helipads and ambulance facilities,
- (e) hospitals.

The proposed Health Services Facility (medical centre) is consistent with the general aims of the SEPP to facilitate the effective delivery of infrastructure across the State by providing greater flexibility in the location infrastructure and service facilities.

(i) Clause 45 – Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any DA (or an application for modification of consent) for any development carried out:

- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);*
- *Immediately adjacent to an electricity substation;*
- *Within 5m of an overhead power line;*
- *Includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line.*

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

(ii) Clause 102

The proposed modification application does not trigger the provisions of Schedule 3 Traffic Generating Development and does not require a referral to Transport for NSW.

SEPP 33 – Hazardous and Offensive Development

The SEPP requires Council to assess whether or not the proposed development stores or requires the transport of dangerous goods above its screening thresholds. If any of the SEPP's thresholds are breached, Council must then determine whether or not the proposed development is hazardous or offensive by considering the measures proposed to reduce the impact of the dangerous goods, including setbacks from the site boundaries, in accordance with the SEPP.

The application relates to an approved medical centre to be used as cancer treatment facilities and the proposed modifications are unlikely to alter the proposal with regard to compliance with the provisions of SEPP 33; therefore, the proposed modification application is not considered to be hazardous or offensive development as defined by the SEPP.

Warringah Local Environmental 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

Principal Development Standards

Unchanged

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	N/A - No height limit	21.95m	Unchanged	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B4 Site Coverage	33.3% (599.9m ²)	36% (647m ²)	Unchanged	No
B5 Side Boundary Setbacks	Nil	4.2m eastern side boundary 4.5m - 27.4m western side boundary	Unchanged	Yes
B7 Front Boundary Setbacks	30m from Warringah Road	15m from Warringah Road	Unchanged	No
B9 Rear Boundary Setbacks	Merit Assessment	7.3m for the majority of the development with small portion (switch room) has nil setback to the rear	Unchanged	Yes
D1 Landscaped Open Space and Bushland Setting	33.3% (599.9m ²)	35% (621.6m ²)	Unchanged	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D11 Roofs	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E10 Landslip Risk	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0077 for Modification of Development Consent DA2019/1419 granted for the construction of a Health Services Facility, being a Medical Centre (Cancer Treatment Centre) with basement parking, signage and landscaping on land at Lot 7 DP 1020015,49 Frenchs Forest Road East, FRENCHS FOREST, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Roof Plan, DA-050, Rev 5	12/2/2021	Team 2 Architects
Elevations - Sheet 1, DA-200, Rev 6	12/2/2021	Team 2 Architects
Elevations - Sheet 2, DA-201, Rev 6	12/2/2021	Team 2 Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Structural Engineering Statement	16/9/2020	TTW
Hydrogeological Investigation and Analysis	3/8/2020	JK Geotechnics
Preliminary Groundwater Quality Screening	12/8/2020	JK Geotechnics
Geotechnical and Hydrogeological Opinion	23/2/2021	JK Geotechnics
Fire Services Letter	19/2/2021	Acor Consultants

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and

approved plans.

B. Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements to read as follows:

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference
Water NSW	IDAS1121680
Water NSW	S961135520

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

C. Modify Condition 23 - Pre-Construction Dilapidation Report to read as follows:

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

- Lot 6, DP 1020015
- Lot 4/5, DP 1020015
- Lot 8/9, SP 73123
- Shared Driveway of 49 Frenchs Forest Road East

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

D. Delete Condition 15 - Tanking of Basement Level which reads as follows:

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Lashta Haidari, Principal Planner

The application is determined on 06/07/2021, under the delegated authority of:



Steven Findlay, Manager Development Assessments