

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1876
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 20 DP 632081, 79 Cabbage Tree Road BAYVIEW NSW 2104
Proposed Development:	Internal alterations and additions to a community centre building within retirement village.
Zoning:	RU2 Rural Landscape
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Aveo North Shore Retirement Villages Pty Ltd
Applicant:	Aveo North Shore Retirement Villages Pty Ltd

Application Lodged:	14/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Community facility
Notified:	18/11/2022 to 02/12/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 125,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the construction of internal alterations and additions to a community centre building within a retirement village. The proposed alterations are located internally and no external works are proposed. Works are proposed on the First Floor and Second Floor of the community centre, including demolition of internal walls, changes to the configuration of rooms and minor alterations to walls.

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

Pittwater Local Environmental Plan 2014 - Zone RU2 Rural Landscape

Pittwater Local Environmental Plan 2014 - 5.21 Flood planning

Pittwater Local Environmental Plan 2014 - 7.4 Floodplain risk management

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater 21 Development Control Plan - B3.1 Landslip Hazard

Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation

SITE DESCRIPTION

Property Description:	Lot 20 DP 632081 , 79 Cabbage Tree Road BAYVIEW NSW 2104
Detailed Site Description:	<p>The site is a large, generally square shaped lot, zoned RU2 Rural Landscape. Access is from Cabbage Tree Road via the driveway in the north eastern corner.</p> <p>The site is located in a valley, with the land sloping down from north, south and west, and the lowest point located near the centre of the eastern boundary.</p> <p>There is an existing senior's living development on site, which is confined mainly to the south eastern corner and centre of the site. The south western corner, and northern portion of the site, is well vegetated and largely undisturbed.</p> <p>Surrounding development consists mainly of detached dwellings to the north, east and south. There is little or no development immediately to the west and south west.</p>

Map:



SITE HISTORY

A search of Council's records has revealed the following:

Application N0198/02 for 82/149 (approved by the Land and Environment Court, dated 9 March 1982) for a retirement village comprised of aged persons housing.

The consent allowed for:

- 40 hostel suites;
- 185 self-care units;
- A village centre;
- Car parking (188 spaces);
- Recreational facilities; and
- Extensive landscaping.

Modifications to this consent have been applied for thorough the history of the site. Among others, these have included:

Mod2018/0327 for Modification of Development Consent 82/149 granted for a retirement village comprising aged persons housing and additional car parking. This application was refused on 7/04/2020.

Mod2018/0076 for Modification of Development Consent 82/149 granted for a retirement village comprising aged persons housing. This application was approved by the Land and Environment Court (dated 23 January 2020).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p>

Section 4.15 Matters for Consideration	Comments
	<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 proposed land use.</p>
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

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?**

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."

This necessarily requires the following questions to be answered:

1. Was the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

Comment:

The use of the land commenced as a lawful purpose after approval by the Land and Environment Court in 1982, prior to the coming into force of Pittwater Local Environmental Plan 2013.

2. Was the use of the land granted development consent before the commencement of a provision

of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the land was lawfully approved by the Land and Environment Court on 9 March 1982, prior to the coming into force of Pittwater Local Environmental Plan 2013.

3. Has the use of the land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The use of the land has been carried out for many years up to the present, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposal consists entirely of internal alterations within the community centre of the retirement village. No change is proposed to the existing external built form and there is therefore no additional bulk and scale or visual impacts. No concerns are raised in this regard.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The proposal consists entirely of internal alterations within the community centre of the retirement village. No change is proposed to the existing external built form and there is therefore no additional bulk and scale or visual impacts. No concerns are raised in this regard.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed works will have little or no impacts on any adjoining land, given the internal nature of the proposed works. No concerns are raised in this regard.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The proposed works are promoted to improve amenity for residents of the retirement village through alteration of the existing community centre. No concerns are raised in this regard.

Conclusion

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Pittwater Local Environmental Plan 2014).

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A letter has been provided by the applicant from Ember Bushfire Consulting (dated 28 October 2022) with comments regarding the proposed alterations. The letter states that a bushfire assessment or supporting report for the proposed works is not required on the basis that the works consist of minor internal alterations and upgrades only. It further states that approval through a Bush Fire Safety

Authority from the NSW Rural Fire Service is not necessary for this type of development,.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/11/2022 to 02/12/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Building Assessment have not provided comments, however have supported the proposal, without conditions.
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Environmental Health has reviewed the development application (DA) proposing minor internal alterations to the peninsula Gardens Retirement Village which is located at 79 Cabbage Tree Road, Bayview. The proposed internal alterations comprise the following work to the community centre at the First Floor and Second Floor:</p> <ol style="list-style-type: none"> 1. Demolition of internal walls which changes the configuration of rooms 2. Minor internal alterations including replacement walls <p>New walls in the kitchen and bar must be compliant with AS4674-2004 Design, construction and fit out of a food premises and comply with Food Standard Code 3.2.3. It is recommended this is conditioned.</p> <p>Recommendation</p> <p>Supported - subject to conditions</p>
NECC (Riparian Lands and Creeks)	<p>Supported.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy <p>The proposal is for internal works only.</p> <p>On assessment the application on assessment meets the requirements of the relevant Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater.</p>

Internal Referral Body	Comments
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposal includes minor relocations of some internal walls at the community centre within Peninsula Gardens Retirement Village, on both the first and second floors. The northern and eastern edges of the building are slightly flood affected, but the proposed works are not considered to increase flood risk. There are no applicable flood related development controls.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	No
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

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	No Change (Internal Works Only)	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Warriewood Valley Release Area	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.4 Floodplain risk management	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone RU2 Rural Landscape

Seniors housing is no longer permissible in the current zoning of the site. However, the proposal is for a minor modification to a previous approval from 1982, and therefore benefits from existing use rights.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment:

The northern and eastern edges of the community centre building are slightly flood affected, but the proposed works are not considered to increase flood risk. The proposed works have been referred to Council's Stormwater and Floodplain Engineering Officers, who raise no objections, without conditions.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding*

area is impacted by flooding or coastal erosion.

Comment:

The northern and eastern edges of the community centre building are slightly flood affected, but the proposed works are not considered to increase flood risk. The proposed works have been referred to Council's Stormwater and Floodplain Engineering Officers, who raise no objections, without conditions.

7.4 Floodplain risk management

Prior to granting development consent, this clause requires the consent authority to be satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land:

- (a) caravan parks,
- (b) centre-based child care facilities,
- (c) correctional centres,
- (d) educational establishments,
- (e) emergency services facilities,
- (f) group homes,
- (g) hospitals,
- (h) residential care facilities,
- (i) respite day care centres,
- (j) seniors housing,
- (k) tourist and visitor accommodation.

Comment:

The development has been assessed by Council's Stormwater and Floodplain Engineering Officers. The Engineers have raised no objections to approval. Therefore, Council is satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land and the uses listed above.

7.7 Geotechnical hazards

The site is mapped as being located within the 'Geotechnical Hazard H1' area under the provisions of the PLEP 2014. In accordance with Council's Geotechnical Management Policy for Pittwater, the application is to be accompanied by a geotechnical risk assessment report and certified forms. The applicant has not provided a geotechnical report or certified forms as required by Council's policy. To ensure compliance with Council's Geotechnical Management Policy for Pittwater, a suitable condition has been included with this consent requiring the applicant to submit a geotechnical risk assessment report and certified forms. Subject to compliance with the conditions of consent, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, in accordance with the matters outlined in this Clause.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	20m	No Change (Internal Works Only)	N/A	N/A
Rear building line	7.5m, or 20m to a road / reserve	No Change (Internal Works Only)	N/A	N/A

Side building line	7.5m, or 20m to a road / reserve	No Change (Internal Works Only)	N/A	N/A
	7.5m, or 20m to a road / reserve	No Change (Internal Works Only)	N/A	N/A
Building envelope	3.5m	No Change (Internal Works Only)	N/A	N/A
	3.5m	No Change (Internal Works Only)	N/A	N/A
Landscaped area	96% of the site area minus 400 square metres	No Change (Internal Works Only)	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	No	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	No	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.21 Seniors Housing	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes
D14.2 Scenic protection - General	Yes	Yes
D14.3 Building colours and materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D14.7 Front building line	Yes	Yes
D14.8 Side and rear building line	Yes	Yes
D14.14 Landscaped Area - Non Urban	Yes	Yes
D14.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D14.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B3.1 Landslip Hazard

The site is mapped as being located within the 'Geotechnical Hazard H1' area under the provisions of the PLEP 2014. In accordance with Council's Geotechnical Management Policy for Pittwater, the application is to be accompanied by a geotechnical risk assessment report and certified forms. The applicant has not provided a geotechnical report or certified forms as required by Council's policy. To ensure compliance with Council's Geotechnical Management Policy for Pittwater, a suitable condition has been included with this consent requiring the applicant to submit a geotechnical risk assessment report and certified forms. Subject to compliance with the conditions of consent, the proposal will demonstrate consistency with the requirements and outcomes of this control.

B8.3 Construction and Demolition - Waste Minimisation

The application has not been accompanied by a Waste Management Plan. To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to submit a detailed Waste Management Plan to the Certifying Authority prior to the issue of the Construction Certificate. The Waste Management Plan must be prepared in accordance with Council's Waste Management Guidelines. Subject to compliance with the conditions of consent, the proposal will demonstrate consistency with the requirements and outcomes of this control.

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$ 625 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 125,000.

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater 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 Development Consent to DA2022/1876 for Internal alterations and additions to a community centre building within retirement village. on land at Lot 20 DP 632081, 79 Cabbage Tree Road, BAYVIEW, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A004, Issue 01, Site Plan + Drawing Register	25 October 2022	McNally Architects
A005, Issue 01, Site Analysis	25 October 2022	McNally Architects

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and

- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

3. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative

change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by

Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$625.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$125,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

5. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. **Geotechnical Report and Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

A Geotechnical Report must be prepared by a suitably qualified geotechnical engineer and submitted to the Certifier. In addition, Form 1 and Form 1 (a) are to be submitted in accordance with Appendix 5 of the Pittwater 21 DCP. In some cases, only a Form 1 will be required, this will be at the discretion of the Geotechnical Engineer.

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately. A Geotechnical Report must be submitted with a Development Application for any development on any land classified as H1 or H2 on the Geotechnical Hazard Maps.

7. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Principle certifier. These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the food premises complies with the design construction and fit-out requirements.

8. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

9. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier

demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- “Tap in” details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

10. **Waste Management Plan**

The applicant must prepare a detailed Waste Management Plan for the development. The Plan must be prepared in accordance with Council's Waste Management Guidelines.

Details demonstrating compliance must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the proper disposal and management of construction waste.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

12. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

13. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

14. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.
Reason: To ensure geotechnical risk is mitigated appropriately.
15. **Kitchen Design, construction and fit out of food premises certification**
Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier by a suitably qualified person demonstrating that that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.
Reason: To ensure that the kitchen complies with Australian Standard design requirements.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

16. **Geotechnical Recommendations**
Any ongoing recommendations (if any) of the risk assessment required to manage the hazards identified in the Geotechnical Report are to be maintained and adhered to for the life of the development.
Reason: To ensure geotechnical risk is mitigated appropriately.

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

Signed



Jordan Howard, Planner

The application is determined on 20/01/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments