

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0171
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 29 DP 5464, 27 Warriewood Road WARRIEWOOD NSW 2102 Lot 101 DP 1229188, 23 Warriewood Road WARRIEWOOD NSW 2102 Lot 28 DP 5464, 25 Warriewood Road WARRIEWOOD NSW 2102
Proposed Development:	Modification of development consent N0611/16 granted for the construction of a residential aged care facility, subdivision and associated civil works and the extension of a public road (Lorikeet Grove)
Zoning:	R3 Medium Density Residential R3 Medium Density Residential R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	J & G Knowles & Associates Pty Ltd
Applicant:	J & G Knowles & Associates Pty Ltd

Application lodged:	17/04/2019
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	04/05/2019 to 03/06/2019
Advertised:	04/05/2019
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

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 21 Development Control Plan - C6.2 Natural Environment and Landscaping Principles

SITE DESCRIPTION

Property Description:	<p>Lot 29 DP 5464 , 27 Warriewood Road WARRIEWOOD NSW 2102 Lot 101 DP 1229188 , 23 Warriewood Road WARRIEWOOD NSW 2102 Lot 28 DP 5464 , 25 Warriewood Road WARRIEWOOD NSW 2102</p>
Detailed Site Description:	<p>The works proposed within this application are located over three (3) separate allotments, as follows;</p> <ul style="list-style-type: none"> • 23 Warriewood Road, Warriewood (Lot 27, Section C, DP 5464) • 25 Warriewood Road, Warriewood (Lot 28, Section C, DP 5464) • 27 Warriewood Road, Warriewood (Lot 29, Section C, DP 5464) <p>When combined, the site has a 223.7m wide frontage to Warriewood Road (east), a 142.6m wide frontage to Macpherson Street (south), and has a total area of 2.533 Hectares. The site also adjoins Narrabeen Creek for the full length of the western boundary. The site previously contained a single dwelling house in the north-east corner of the site. With the exception of the existing dwelling and some established vegetation along the creekline, the site was generally clear and free of development.</p> <p>The works approved pursuant to N0611/16 have since commenced, and are nearing completion.</p>

Map:



SITE HISTORY

On 12 July 2017, Development Application N0611/16, which sought consent for the construction of a residential aged care facility, subdivision, and the construction of associated civil infrastructure, was approved by the SNPP. In making their decision, the SNPP noted:

"In regards to the Section 94 contribution, the Panel is of the view that the contributions seem excessive given that the average age of residents of the proposal is likely to be >85 years and that facilities and services for the residents will largely be provided on site."

On 1 September 2018, the amended development contributions plan for Warriewood Valley was adopted by Council and came into force. The amended plan altered the calculation of development contributions applicable in relation to residential care facilities.

On 17 April 2019, the subject modification application was lodged with Council. The modification application was notified, advertised and referred to all relevant referral bodies.

On 17 June 2019, a referral response was received from Council's Landscape Officer.

On 11 July 2019, a referral response was received from Council's Development Contribution Officer.

PROPOSED DEVELOPMENT IN DETAIL

The s4.55(1A) modification application seeks to modify development consent N0611/16, in the following way:

- Modify Condition C6, which requires the payment of development contributions, to reduce the required monetary contribution in line with the amended development contributions plan, and
- Modify Condition C23, which requires amendments to the landscape plans, to facilitate the removal of two additional trees.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.55 Assessment

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.</p>
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The development, as proposed, has been found to be such that Council is satisfied that the modified development is substantially the same as that already approved under N0611/16.</p> <p>Whilst the removal of Trees T28 and T29 will have a visual impact in the short term, the trees are exempt species (which can be removed without approval) and compensatory planting is proposed. In consideration of the size of the site and the extent of landscaping proposed, the loss of two exempt trees, although mature, is considered to be of little consequence to the outcome of the site.</p> <p>The proposed modifications to the development contributions condition does not alter the built form outcome on the site. Whilst the monetary contribution associated with the development will be considerably reduced, the modified amount is consistent with the adopted contributions plan for Warriewood Valley, which has been amended since the initial application was approved.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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,</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Regulation 2000 and Pittwater 21 Development Control Plan ('P21 DCP').</p>

Section 4.55(1A) - Other Modifications	Comments
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.	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 4.55 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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	P21 DCP 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 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 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 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 P21 DCP 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</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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	No submissions were received in relation to this application.
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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The modification proposal to remove Condition 23 of Development Consent No. DA N0611/16 is approved, based on the impact that new civil works will have on the tree protection zone (TPZ) and hence long term health and viability.</p> <p>Condition 23 require two (2) Pinus pinaster trees to be retained as shown on the DA Landscape Plan.</p> <p>In consideration of the site constraints to preservation of the trees from civil works along the Warriewood Road road reserve as part of a Section 138 Roads Act Approval No. 2018/0013 dated 29 October 2018, the following impediments are presented to allow the two trees to be retained:</p> <ul style="list-style-type: none"> • new finished road and path levels will result in finished ground levels being 500mm to 1000mm higher than current ground levels under the canopy of the trees outside of the site boundary; and

Internal Referral Body	Comments
	<ul style="list-style-type: none"> trenches for the provision of underground services (required by condition B 13(c) of the development consent), will impact upon the TPZ.
Strategic and Place Planning (S94 Warriewood Valley)	<p>Modification application MOD2019/0171 seeks to modify Condition C6 under DA N0611/16. The DA authorises the construction of a residential aged care facility containing 130 sole occupancy high care rooms and associated civil works.</p> <p>Condition C6 relates to the payment of development contributions and requires the payment of a cash contribution totalling \$5,349,924.08. The contribution was calculated in accordance with the Warriewood Valley Section 94 Contribution Plan Amendment 16 Revision 2, in force at the time of determination. The cash contribution credits the provision of items identified in the Contributions Plan works schedule including the dedication of creek corridor land, the construction of a roundabout, an indented bus bay, and a section of cycleway.</p> <p>The Warriewood Valley Section 94 Contribution Plan Amendment 16 Revision 3 was adopted by Council and came into effect on 1 September 2018. This Plan includes a new methodology for calculating contributions for residential aged care facilities. The modification application seeks to amend Condition C6 to apply the new Contributions Plan and the new methodology for calculating contributions for this development. This request is supported subject to an amended condition of consent.</p> <p>Table B in the Warriewood Valley Section 94 Contribution Plan Amendment 16 Revision 3 identifies that the contribution rate for residential aged care facilities is \$6,099 per bed. This applies to the proposed 130 bed facility and totals \$792,870. The contribution must also be adjusted to account for the credit for the dedication of creek corridor land and the construction of facilities identified in the Contributions Plan. When adjusted to 19/20 dollars as per the financial model, the credits total \$532,105.43. Therefore the total amended cash contribution will be \$260,764.57.</p> <p>Condition C6 should be amended to reduce the cash contribution payable from \$5,349,924.08 to \$260,764.57 in accordance with the Warriewood Valley Section 94 Contribution Plan Amendment 16 Revision 3 .</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment,

many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

Nil

Pittwater Local Environmental Plan 2014

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

Compliance Assessment

Clause	Compliance with Requirements
6.1 Warriewood Valley Release Area	Yes
7.6 Biodiversity protection	Yes

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
C6.2 Natural Environment and Landscaping Principles	Yes	Yes

Detailed Assessment

C6.2 Natural Environment and Landscaping Principles

The removal of Trees T28 and T29 is supported by Council's Landscape Architect, and no objection is raised in this regard. However, the applicant seeks to address this change by amendment to Condition C23 of the consent, which requires the production of an amended Landscape Plan prior to the issuance of the construction certificate. Whilst this may have been the mechanism to address this change if the proposal had not commenced, the proposal is nearing completion, and no further/modified construction certificates are to be issued.

As opposed to the modification to Condition C23 as proposed by the applicant, it is considered that the

same result could be achieved with a new B 'Matters to be incorporated into the development and maintained over the life of the development' condition, as follows:

Condition B45:

This consent authorises the removal of Trees T28 and T29, as identified in the Approved Land

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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.

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;
- 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 approval to Modification Application No. Mod2019/0171 for Modification of development consent N0611/16 granted for the construction of a residential aged care facility, subdivision and associated civil works and the extension of a public road (Lorikeet Grove)

on land at Lot 29 DP 5464, 27 Warriewood Road, WARRIEWOOD, Lot 101 DP 1229188, 23 Warriewood Road, WARRIEWOOD, Lot 28 DP 5464, 25 Warriewood Road, WARRIEWOOD, subject to the conditions printed below:

A. New Condition B45 to read as follows:

This consent authorises the removal of Trees T28 and T29, as identified in the Approved Landscape Plans and Arboricultural Impact Assessment Report referenced in this consent.

B. Modify Condition C6 to read as follows:

The following is to be made for the provision of public infrastructure and services pursuant to Section 94 of the Environmental Planning and Assessment Act 1979:

- A cash contribution of **\$260,764.57** (subject to (a) below) is payable to Northern Beaches Council, and
 - Dedication of 4,281sqm of creekline corridor land in accordance with (b) below.
- a. The monetary contribution will be adjusted at the time of payment in accordance with the latest Consumer Price Index as published quarterly by the Australian Bureau of Statistics as outlined in Council's Warriewood Valley Section 94 Contributions Plan (Amendment 16 Revision 3). The monetary contribution is to be paid prior to the issue of the first Construction Certificate.
 - b. The proponent shall dedicate to Council a total of 4,281 square metres of land identified as Lot 3 on the subdivision plan titled 'Plan of Subdivision of Lots 27-29 Section C in DP 5464' (Issue B, prepared by David Bromhead, dated 1 May 2017) for the provision of multi-functional creek line corridor facilities. The area of land to be dedicated is subject to a final Plan of Subdivision. The dedication is to take place by way of subdivision.
 - c. The proponent may negotiate with Council for the direct provision of facilities and services in lieu of the monetary contribution above (or any portion of that contribution) through a Material Public Benefit offer to Council. Any Material Public Benefit agreement between the applicant and Council must be finalised, formally signed and in place prior to payment being made.

The Warriewood Valley Section 94 Contributions Plan (Amendment 16 Revision 3) may be inspected at Northern Beaches Council's **Customer Service Centres** of Council's website www.northernbeaches.nsw.gov.au

C. New Condition E8 to read as follows:

Two (2) replacement street trees shall be located along the Warriewood Rd verge as replacement for the *Pinus pinaster* trees, and shall be sourced and planted in accordance with the Warriewood Valley

Landscape Masterplan and Design Guidelines requirements in S-1, as follows:

- tree species: *Lophostemon confertus*
- planting size: minimum 400 litre, 3.5m height, and 60mm caliper
- source: all trees shall be obtained through a pre-order agreement with a nursery to deliver to the required planting size listed above

- specification: all tree planting works shall be in accordance with S-1, including required mass planted garden bed under the street tree, timber edging, soilmix and mulch, and tree guards
- establishment: the street tree planting works is subject to a 12 month establishment and maintenance period. Any failure of planting shall be replaced at the applicant's cost.

All street tree works, including acceptance of the tree species, and signoff for handover, is subject to inspection and approval by Council.

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

Signed



Rebecca Englund, Principal Planner

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



Matthew Edmonds, Manager Development Assessments