

10 April 2019
Our Ref: 20768A.2DK_s4.55 Mod



planning consultants

The General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Attention: Rebecca Englund

Dear Rebecca

**RE: SECTION 4.55(1A) APPLICATION TO MODIFY
DEVELOPMENT CONSENT NO. DA N0611/16
23 WARRIEWOOD ROAD, WARRIEWOOD**

1.0 Introduction

DFP has been commissioned by J & G Knowles & Associates Pty Ltd to prepare an application under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify development consent No. N0611/16 for the *construction of a residential aged care facility containing 130 sole occupancy high care rooms, subdivision and associated civil works and the extension of a public road* at 23 Warriewood Road, Warriewood.

The section 4.55(1A) application seeks to modify Condition C6 relating to the payment of development contributions and Condition C23 relating to landscape plan amendments to include a further amendment to remove Trees 28 and 29 that were indicated as retained on the approved landscape plans.

This letter has been prepared in support of the section 4.55(1A) application and includes the information necessary for Council to assess and determine the application including:

- A background outlining the approved development;
- A brief description of the site context;
- Details and reasons for the proposed modifications;
- An environmental assessment; and
- Our conclusion and recommendations.

We have concluded that the proposed modifications will not substantially alter the approved development and accordingly are considered to satisfy the requirements to enable these modifications to be approved by Council pursuant to section 4.55 of the EP&A Act.

The proposed modifications are unlikely to result in any adverse environmental impact and accordingly, we are of the view that the proposed modifications are acceptable in this particular instance.

2.0 Background

On 13 July 2017 Council granted development consent to Development Application No. N0611/16 for *construction of a residential aged care facility containing 130 sole occupancy high care rooms, subdivision and associated civil works and the extension of a public road* at 23 Warriewood Road, Warriewood.

There are two conditions to be modified both of which are contained in Section C – Matters to be satisfied prior to the issue of the Construction Certificate. The conditions to be modified are:

1. Condition C6 which relates to the provision of public infrastructure including the payment of monetary contribution.
2. Condition C23 which relates to amendments to the Landscape Plan that indicated the retention of Trees 28 and 29 which are *Pinus pinaster* Maritime Pine and are located close to the Warriewood Road property boundary.

Section 4.0 of this submission outlines the proposed modifications to the consent.

3.0 Site Description

The site is known as 23-27 Warriewood Road, Warriewood. The legal property description is set out in the table below.

Street Number	Legal Property Description
No. 23	Lot 101 DP 1229188
No. 25	Lot 28 Section C DP 5464
No. 27	Lot 29 Section C DP 5464

The trees proposed to be removed are located on No. 25 Warriewood Road.

4.0 Proposed Modifications and Reasons for the Modifications

The consent is proposed to be modified as follows:

4.1 Condition C6 - Development Contributions

Condition C6 requires payment of a monetary contribution of \$5,349,924.08 which is subject to indexation as per the Warriewood Valley Section 94 Contributions Plan (Amendment 16, Revision 2). This contributions plan has been repealed and replaced with Warriewood Valley Contributions Plan (Amendment 16, Revision 3) which came into effect on 1 September 2018.

Revision 3 of the Plan has changed the contribution rate for a residential care facility to a rate of \$5,945 per bed. The new Contributions Plan contains an explanation for the calculation of contributions for assisted living development (which includes a residential care facility). Page 22 of the Contributions Plan provides the following explanation for the amended contribution rate:

“Despite being assessed under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, a different contribution rate is applied to assisted living developments (known as residential aged care facilities or nursing homes). This rate is based on the different levels of demand for infrastructure generated by this type of development. Due to the age, health or mobility restrictions of residents in assisted living developments, these residents will not create the same demand for open space, community facilities and pedestrian and cycle infrastructure as other residential development in the Release Area.”

It is therefore proposed to amend Condition C6 to reference the Plan now in force and adjust the contribution payable accordingly.

The Assessment report to the Sydney North Planning Panel dated 28 June 2017 provided commentary from Council's s94 Coordinator which included offsets to the cash contribution for various works being undertaken by the applicant including:

- \$221,239 for land along the creek corridor;
- \$177,979 for construction of the roundabout at the intersection of Warriewood Road and Lorikeet Grove;
- \$4,428 for provision of an indented bus bay; and
- \$58,968 for the construction of a section of a pedestrian / cycleway.

Condition C6 will need to be amended to:

- Calculate the new contribution based on \$5,945 per bed = \$772,850; and
- Recalculating the combined offsets and deducting that amount from \$772,850 to ascertain the new cash contribution amount to be inserted into the first bullet point of condition C6;
- Updating references to the new contributions plan.

4.2 Condition C23 – Landscape Plans

The approved landscape plans and arborist report require the retention of Trees 28 and 29 being Maritime Pines located close to the Warriewood Road property boundary. The location of the trees is highlighted in **Figure 1**, being one of the approved landscape plans drawings.

Council has approved civil work along the Warriewood Road reserve as part of a Section 138 Roads Act Approval No. 2018/0013 dated 29 October 2018. The following infrastructure works associated with the approved development and civil works will need to occur close to the trees:

- Construction of the new roads and footpaths;
- New finished grounds levels to suit the roads and footpaths which 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 (i.e. within the road reserve); and
- Trenches for the provision of underground services (required by condition B 13(c) of the development consent).

Redgum Horticultural has provided advice to the Knowles Group recommending that the trees T28 and T29 be removed due to the impacts of associated with the above and landscaping works. A copy of their advice is included at **Attachment 1**. Redgum Horticultural also notes that the two trees are exempt species not protected under Council's guidelines.

The Exempt Tree Species List published by Council identifies *Pinus* spp (Pine) as being trees exempt from requiring a permit for removal. Their removal is therefore consistent with the Council's policy and could be removed without approval. However, their removal is included within the modification application due to the trees being shown as retained on the landscape plan.



Figure 1 Location of Trees T28 and T29 on approved landscape plan TP01_A parped by CDA Design Group Pty Ltd, dated 11 May 2017

It is proposed to amend Condition C23 by adding an additional paragraph (j) to the condition to reflect the removal of trees T28 and T29, as set out below. Additional text is underlined.

23. The approved Landscape Plans, as referenced in this consent, are to be amended, as follows;

(a)

.....

(j) Trees T28 and T29 (Pinus pinaster, Maritime Pine) are to be removed to facilitate infrastructure works including road, footpath and trenching to enable the undergrounding of services.

5.0 Statutory Provisions

Section 4.55 of the EP&A Act contains the provisions that must be considered by Council in determining an application to modify a Notice of Determination. In this regard, the relevant provision is section 4.55(1A) of the EP&A Act.

This application is lodged under section 4.55(1A) as the amendment proposed is considered to be minor in nature and will have only minimal environmental impact.

In addition to the EP&A Act, Clause 115 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) contains the information that must be submitted with an application to modify a consent. The requirements under the EP&A Act and EP&A Regulation are detailed below.

5.1 Section 4.55(1A) of the Act

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that a number of matters be addressed, as discussed below:

“A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) It is satisfied that the proposed modification is of minimal environmental impact”

The proposed modification to Condition C6 in relation to development contributions does not give rise to any environmental impacts. The new Contributions Plan which has come into force since the date of determination of the DA recognises that residential care facilities have a lower demand on public infrastructure than other forms of residential development. The amendment of condition C6 is consistent with the Council’s current planning policy framework.

The proposed modification to remove trees T28 and T29 is an unavoidable consequence of the implementation of the development consent and compliance with the conditions of the development consent. Condition C23(g) of the consent requires the provision of 3 street trees along Warriewood Road. The approved public domain landscape plans have provided for 12 *Lophostemon confertus* (Brushbox) in the public domain. Five of these are in the vicinity of trees T28 and T29 and we note that the Pine trees would be close to the Brushboxes resulting in competition between the trees. The public domain landscaping provides for 9 more trees than required by the condition. Whilst two trees are being removed, the additional street tree plantings more than compensates for the removal of trees T28 and T29. The Brushbox street trees achieves a landscape outcome consistent with the plant list in the *Warriewood Valley Landscape Masterplan and Design Guidelines*.

As noted above, the two pines trees are identified in Council’s Exempt Tree Species List as being trees exempt from requiring a permit for removal. Their removal is therefore consistent with the Council’s policy and could be removed without approval. Therefore, their removal should be considered as having minimal environmental impact.

For the above reasons the modification will therefore have minimal environmental impact.

“(b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”

The approved development is for a residential care facility and the modified development will remain substantially the same development as the development for which consent was originally granted. The DCP also provides a provision for Council to vary the notification requirements at Council’s discretion.



- “(c) It has notified the application in accordance with:**
- (i) The regulations, if the regulations so require, or**
 - (ii) A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modifications of a development consent,”**

Section A5.1 of Pittwater DCP provides that modification applications will be exhibited and/or notified as per the original development application, including a written notice sent to each person who made a submission to the original development application.

- “(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”**

Should Council notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

Subsections (1), (2) and (5) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in Section 6.0 of this submission.

5.2 Clause 115 of the EP&A Regulation 2000

Subclause 115(1) of the Regulation details the information required to be submitted with an application to modify a Development Consent under section 4.55. These details are contained in this letter and the accompanying application form.

6.0 Environmental Planning Assessment

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) as are of relevance to the proposed modification must be taken into consideration in determining the application for modification. Accordingly, the following subsections provide an assessment of any such relevant matters.

The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The development consent contains the following general statement:

“The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.”

The above reasons for the imposition of the conditions is considered in this letter.

6.1 Section 4.15(1)(a) – Planning Controls

6.1.1 Pittwater Local Environmental Plan (LEP) 2014

The site is zoned R3 Medium density residential under Pittwater LEP 2014. Seniors housing is permitted with consent. The proposed modification is consistent with the zoning.

There are no other provisions of the LEP that directly relate to the proposed modification.

6.1.2 Pittwater 21 Development Control Plan

Section B4.22 Preservation of Trees and Bushland Vegetation states that a permit is not required to remove a tree on the Exempt Trees Species list. As noted earlier the trees are identified on Council's Exempt Trees Species list, however, the modification is submitted due to trees T28 and T29 being identified as being retained on the approved landscape plans. The modification will remove doubt about compliance with the development consent.

Section C6.2 Natural Environment and Landscaping applies to details of landscaping plans for new developments and public domain works. Landscaping plans have already been approved for the residential care facility and aside from removal of T28 and T29, no other changes to the approved landscaping plans are proposed. As noted earlier in this report, public domain landscaping associated with the proposed development includes the planting of Brushbox street trees which is consistent with the street trees species in the *Warriewood Valley Landscape Masterplan and Design Guidelines*.

6.2 Section 4.15(1)(b) – Natural and Built Environmental Impacts

The impacts upon the natural environment have been addressed in detail earlier in this report. The two trees to be removed are exempt species on the Council's Exempt Trees Species List. The applicant is planting more street trees than required by the development consent, and these street trees will be planted adjacent to the location of the trees to be removed. Therefore, there is no net loss of vegetation and the removal of the pines will remove the competition for the street trees resulting in a better streetscape outcome.

6.3 Section 4.15(1)(b) – Social and Economic Impacts

The modification of condition C6 results in a reduction in the monetary contribution payable for the development. The social consequences of this have been considered in the repeal of Warriewood Valley Section 94 Contributions Plan (Amendment 16, Revision 2) and its replacement with Warriewood Valley Contributions Plan (Amendment 16, Revision 3). Revision 3 recognises that residential care facilities have a different (lower) demand for open space, community facilities and pedestrian and cycle infrastructure compared to other residential development in the Warriewood Valley Release Area. Therefore, Council has introduced a lower contribution rate for these forms of development. The proposed modification is consistent with the recent change in Council's contributions plan and is therefore considered consistent with the social and economic outcomes anticipated by Council.

6.4 Section 4.15(1)(c) – Suitability of the Site for Development

The suitability of the site for the development of seniors housing is unchanged because of the proposed modifications.

6.5 Section 4.15(1)(d) – Submissions

Should Council notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

6.6 Section 4.15(1)(e) – Public Interest

This assessment has not identified any matters of the public interest that are relevant to the proposed modifications.

7.0 Conclusion and Recommendations

This submission accompanies an application under section 4.55(1A) of the EP&A Act to modify Conditions C6 and C23 of Development Consent No. N0611/16. The proposal involves a minor modification to these conditions to:



- Amend Condition C6 in relation to the section 7.11 development contribution rate to be applied to the development which is in line with the recently adopted Warriewood Valley Contributions Plan (Amendment 16, Revision 3); and
- Amend condition C23 in relation to the approved landscape plans to include one further amendment to permit the removal of Trees T28 and T29 to facilitate the public domain and civil works that have been approved for Warriewood Road.

The modifications will not substantially alter the approved development and accordingly, are considered to satisfy the requirements pursuant to section 4.55(1A) of the EP&A Act.

The proposed modifications are considered to have acceptable environmental impacts for the reasons set out in this report.

Accordingly, we are of the view that the proposed modifications are acceptable in this particular instance and can be approved under section 4.55(1A).

We would be pleased to discuss this application further with Council officers should that be required and if you have any queries, please do not hesitate to contact David Kettle from our office.

Yours faithfully
DFP PLANNING PTY LTD

A handwritten signature in black ink, appearing to read 'D. Kettle', written over a horizontal line.

DAVID KETTLE
DIRECTOR

dkettle@dfpplanning.com.au

Reviewed: _____

A handwritten signature in black ink, appearing to read 'E. R. H.', written over a horizontal line.

Attachment 1: Redgum Horticultural advice