

25 June 2019

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Ray Brownlee
Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

Dear Mr. Brownlee,

SECTION 4.55(1A) MODIFICATION APPLICATION 207 and 199 FOREST WAY, BELROSE (DA2018/1332)

This application has been prepared by Ethos Urban on behalf of Catholic Healthcare Ltd (Catholic Healthcare), pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify development consent DA2018/1332 relating to the renewal of a part of the Glenaeon Retirement Village at 207 Forest Way, Belrose and the development of a residential care facility (RCF) at 199 Forest Way, Belrose (the Site).

Specifically, the subject modification seeks to amend condition (9) of the DA2018/1332 to exclude the residential care facility at 199 Forest Way from the calculation of the Section 7.12 levy, in line with the Ministerial Direction dated 14 September 2007 (Ministerial Direction) made pursuant to section 7.17 (previously section 94E) that provides exemptions to developer contributions for certain seniors housing developments.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in 4.55(1A) of the EP&A Act. It should be read in conjunction with the Statement of Environmental Effects prepared by Ethos Urban dated 10 August 2018.

This application is accompanied by:

- Letter from Allens dated 19 June 2019 confirming Catholic Healthcare is the operator of the RCF and its status as a “social housing provider”. (**Attachment A**).

1.0 Background

On 17 April 2019, prior to the determination of the DA2018/1332, the applicant wrote to Northern Beaches Council in response to the draft without prejudice conditions of consent issued by Council. Among other changes sought within the letter, the applicant requested that the RCF component be excluded from the calculation of section 7.12 development contributions, pursuant to the Ministerial Direction. A copy of this letter was also made available to the Sydney North Planning Panel on 26 April 2019, being the consent authority for the regionally significant DA.

On 1 May 2019, the Sydney North Planning Panel approved the Development Application (DA) for demolition works and the construction of major additions to Glenaeon Retirement Village (207 Forest Way), including self-contained dwellings and a new residential care facility on a neighbouring lot (199 Forest Way), with associated carparking, landscaping and public road modifications. While condition 9 of the DA consent (DA2018/1332), relating to the section 7.12 developer contributions was not amended, the Determination and Statement of Reasons issued by the Sydney North Planning Panel noted that:

The Panel notes that the applicant has requested also the deletion or amendment of Conditions 9, 11, 12, 13, 14, 27, 28, 29 and 99 [...] Condition 9 remains as the council has no written evidence that the development will be run by a not-for-profit service provider. On receipt of such evidence, the applicant may apply for the deletion of this condition.

To this end, this application seeks to now modify Condition 9 and remove the RCF component from the section 7.12 levy calculations. Written evidence prepared by Allens dated 19 June 2019 confirming that Catholic Healthcare will be the operator of the approved RCF and its status as a social housing provider as defined by *SEPP (Housing for Seniors or People with a Disability) 2004* (SEPP Seniors) is provided in **Appendix A**.

2.0 Consent to be modified

This application seeks to modify the development consent DA2018/1332 for demolition works and the construction of major additions to Glenaeon Retirement Village (207 Forest Way), including self-contained dwellings and a new residential care facility on a neighbouring lot (199 Forest Way), with associated carparking, landscaping and public road modifications.

This application represents the second modification to the approved development consent.

It is worth noting that alongside this modification, a separate section 4.55 (1A) application has also been concurrently submitted to Northern Beaches Council in relation to modifying the DA consent (DA2018/1332) to allow for staged construction and occupation of the development.

3.0 Proposed modifications to consent

3.1 Proposed modifications to development

This application seeks approval to amend condition 9 of DA2018/1332 to exclude the estimated cost of works of the approved RCF from the calculation of the Section 7.12 levy on the basis that the facility will be operated and managed by Catholic Healthcare. Catholic Healthcare is a “social housing provider” as defined by *SEPP (Housing for Seniors or People with a Disability) 2004* (SEPP Seniors) (see Appendix A).

This is consistent with the Ministerial Direction, made pursuant to section 7.17 (previously section 94E) of the EP&A Act. Consistency with the Ministerial Direction and section 7.17 of the EP&A Act is discussed further in **Section 5.2** of this SEE.

3.2 Proposed modifications to conditions

The proposed modifications as described above necessitate the amendment of Condition 9 as identified below. Words proposed to be deleted are shown in ~~**bold strike through**~~ and words to be inserted are shown in **bold italics**.

Condition 9. Policy Controls
Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

<i>Northern Beaches Council Contributions Plan 2018</i>		
<i>Contribution based on a total development cost (excluding the residential care facility) of \$66,030,190.60 \$34,745,447</i>		
<i>Contributions</i>	<i>Levy Rate</i>	<i>Payable</i>
<i>Total Section 7.12 Levy</i>	<i>0.95%</i>	\$627,286.81 \$330,081.75
<i>Section 7.12 Planning and Administration</i>	<i>0.05%</i>	\$33,015.10 \$17,372.72
<i>Total</i>	<i>1%</i>	\$660,301.91 \$347,454.47

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney – All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

*This fee must be paid prior to the issue of the **first** Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.*

4.0 Substantially the same development

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the development to which the consent as modified 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 development, as proposed to be modified, is substantially the same development as that originally approved as it relates only to the adjustment of development contributions amount payable under the DA consent, with no alterations to the approved plans or the built form of the final development. The proposed changes to the Section 7.12 levy are consistent with the relevant Ministerial Direction providing exemptions to development contributions for certain seniors housing developments.

5.0 Environmental assessment

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the proposed modification is of minimal environmental impact”. Under section 4.55(3), the consent authority must also take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act.

The proposed modification will not result in any additional environmental impacts other than those envisioned and assessed under DA2018/1332. This modification does not propose any changes to the built form, approved use or design of the approved development, and seeks only to amend condition 9 of the DA consent to adjust the Section 7.12 levy in accordance with the Ministerial Direction exempting certain seniors housing developments from development contributions.

An assessment of the relevant matters under section 4.15(1) is demonstrated below.

5.1 Environmental Planning Instruments

This application seeks to modify condition 9 of the DA consent with respect to development contribution only. No changes are proposed to the approved built form and use under the original DA (DA2018/1332). On this basis, no further planning assessment is necessary as no further environmental impact is envisaged from the proposed modification that was not already assessed under the original DA.

5.2 Consistency with Section 7.17 of the EP&A Act

Section 7.17 of the EP&A Act reads that:

- (1) The Minister may, generally or in any particular case or class of cases, direct a consent authority as to:*
[...]
d. the type or area of development in respect of which a condition under section 7.12 may be imposed and the maximum percentage of the levy.

Consistent with the Ministerial Direction dated 14 September 2007 made pursuant to section 7.17 (previously section 94E), which reads:

[...] there are no public amenities or public services in relation to which a condition under Division 6 of Part 4 of the Act may be imposed on the class of development consents identified in Schedule A granted to a social housing provider as defined in the SEPP. This direction applies to development applications made by such a social housing provider on or after commencement of the SEPP.

With Schedule A being that of:

Development consents to carry out development for the purposes of any form of seniors housing as defined in State Environmental Planning Policy (Seniors Living) 2004.

It is noted that the wording of the Ministerial Direction regarding conditions to be imposed under Division 6 Part 4 of the EP&A Act relating to “public amenities or public services” is considered to be broad in nature and its intent is for it to apply to the imposition of contributions generally (whether they are imposed under s7.11 or s7.12 of the EP&A Act). Indeed, prior to the amendment to the EP&A Act on 1 March 2018, all contributions (section 94 and section 94A – now known as s7.11 and s7.12) sat under Division 6 of Part 4 of the EP&A Act, and therefore the Ministerial Direction applies to any condition imposed under this part of the EP&A Act.

The exclusion of the residential care facility at 199 Forest Way from the calculation of the Section 7.12 Levy is therefore consistent with such criteria, as:

- The Development Application is made after the commencement of SEPP Seniors;
- The form of seniors housing approved to be carried out is defined as a “residential care facility” under SEPP Seniors (notwithstanding the DA being approved under Warringah LEP 2000); and
- The operator of the residential care facility is a “social housing provider” (Catholic Healthcare) as defined by SEPP Seniors (see **Attachment A**)

5.3 Site suitability

No alteration to the final built form, approved use, or design of the development is proposed, and as such the proposed development, as modified, remains suitable for the Site. The exclusion of RCF from the section 7.12 contributions amount under Condition 9 is appropriate given its status as seniors housing operated by a not-for-profit services provider.

5.4 Public interest

The proposed development is in the public interest as:

- It will facilitate the realisation of a residential care facility run by a not-for-profit social housing provider who delivers essential housing to the community, without unreasonably burdening the provider with development contributions consistent with the intent of the Ministerial Direction;
- It introduces aged care services within Belrose and allows for senior residents within the community to age in place; and
- It provides an opportunity for continuum of care, close to family and friends, for the residents of the several retirement living villages in the locality.

5.5 Reasons given for granting consent

In accordance with Section 4.55(3) of the Act, the consent authority is required to take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The SNPP's reasons for granting consent have been summarised below:

- The social benefit of a residential care facility being on the same site as a retirement village with independent living units;
- The panel considered that use was permissible under the Warringah LEP 2000; and
- The panel considered that the proposal is consistent with the desired future character within the B2 Locality.

The proposed modification will not undermine the original reasons for the granting of consent and is consistent with the reasons given that the modification facilitates the realisation of the residential care facility and associated social benefits as anticipated by the SNPP approval.

6.0 Conclusion

This section 4.55(1A) modification seeks to modify Condition 9 of the DA consent (DA2018/1332) in line with the Ministerial Direction. In accordance with section 4.55(1A) of the EP&A Act, the Minister or their delegate may modify the consent, given that:

- The proposed modification is of minimal environmental impact;
- The consent, as proposed to be modified, is substantially the same development as that originally approved; and
- The development's compliance with the key statutory plans and controls remains consistent as that originally approved.

In light of the merits of the proposed development, and in the absence of any significant environmental impacts, it is without hesitation that we respectfully recommend this application for development consent. We trust that this information is sufficient to enable assessment of the proposed modification application. Should you have any queries regarding this matter, please do not hesitate to contact jmathew@ethosurban.com or 9956 6962.

Yours sincerely,



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