



5 July 2019

DB 16-122

General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

**Re: S4.56(1) Application to modify consent to Development Application N0123/17 -
Demolition of an existing aged care facility and construction of a new
residential aged care facility at 184 Garden Street, Warriewood**

1 INTRODUCTION

We write on behalf of Opal Aged Care Pty Ltd (Opal) in reference to the consent to DA N0123/17 - Demolition of an existing aged care facility and construction of a new residential aged care facility at 184 Garden Street, Warriewood.

Since consent was granted, detailed design has progressed resulting in design refinements to the approved scheme and changes to reflect Opal proposed operational model at the facility.

The application seeks to modify the consent in accordance with the provisions of Section 4.56(1) of the EP&A Act for the following reasons:

- the applicant has opted to lodge the application with Council rather than the Land and Environment Court;
- the consent as modified will be substantially the same as the development as originally approved.

The modifications seek to improve the design and sustainability of the facility and improve the range of services available to residents. As discussed below, the modifications have no significant additional environmental impacts. It is considered that the proposed modifications are of minimal environmental impact and Clause 117 of the EP&A Regulation applies.

Opal has instructed BBC Consulting Planners to prepare this submission and the attached supporting information to form part of the Section 4.56(1) application.

2 LAND TO WHICH THIS SECTION 4.56(1) APPLICATION RELATES

The land to which this development application relates is the Opal Seaside Nursing Home located at No 184 Garden Street, Warriewood NSW 2102. The real property description of the site is Lot 2 in Deposited Plan 595174. The site is owned by Principal Healthcare

Finance Pty Limited (being Opal Aged Care). This is the same land to which the consent relates.

3 CONSENT SOUGHT TO BE MODIFIED

The consent to which this application relates is that granted pursuant to Development Application N0123/17 granted by the Land and Environment Court on 8 October 2018. This consent was for demolition of an existing aged care facility and construction of a new residential aged care facility.

4 REQUESTED MODIFICATIONS

Details of the modifications sought are provided on the architectural plans accompanying the application. Consequential changes have been made to approved landscape and civil drawings. The changes are described below. The modifications can be given effect by changes to the approved drawings and reports in condition A0.

1. Conversion of rooms to allied health facility consulting and open therapy spaces (note 7 on drawings)

It is proposed to convert six of the approved residential care rooms on the ground floor to an allied health facility consulting and open therapy spaces. This is an area where physiotherapists and exercise physiologists deliver professional services in areas of rehabilitation and exercise. The allied health facility model underpins Opal's ethos to provide their residents with access to quality healthcare services ensuring they continue to live a healthy, comfortable and abundant life and maintain connections with the general community. Experience at other centres indicates significant benefits from such facilities in resident wellbeing and health.

The facility includes a physical therapy area, treatment rooms, office and reception area. It has access to an external deck for open air exercises. The facility is accessed from within the residential care facility and from the porte-cochere area. The majority of the clients of the facility would be residents of the approved seniors housing development. The facility is expected to require up to 4 additional staff at any one time. Additional car parking has been provided adjacent to the entry driveway.

The facility will operate in accordance with a Plan of Management accompanying this application.

The inclusion of this facility results in a reduction in the number of beds from 156 to 147 and maintains the building footprint area as approved under the original DA.

2. Changes to staff courtyard level(note 8 on drawings)

The approved design incorporates a staff outdoor courtyard at RL 4.98m AHD, a few steps down from the adjacent staff room at RL 6.16m AHD. It is proposed to raise the level of the courtyard to provide accessibility between the two areas.

(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.

(1A) In determining an application for modification of a consent under this section, 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 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.

(1B) (Repealed)

(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.

(3) The regulations may make provision for or with respect to the following:

(a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,

(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,

(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.

In relation to **Section 4.56(1)(a)**, Council can be satisfied that the development as approved under DA N0123/17 will be substantially the same development once modified in accordance with this application. The proposal does not alter the scope of the original development which remains a residential care facility. There is no significant change to the appearance, functionality, use or scale of the development or to access arrangements. There is a reduction in the number of rooms from 133 to 127 rooms and an additional 4 car parking spaces for the allied health facility. The allied health facility is provided primarily for the use of residents and broadens the range of services offered to residents.

The requirements of **Section 4.56(1)(b), (c) and (d)** are to met by Council as required in its consideration of this application.

Section 4.56(1A) of the EP&A Act further states:

In determining an application for modification of a consent under this section, 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 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 following section assesses the proposed modifications under the relevant heads of consideration of Section 4.15 of the Environmental Planning and Assessment Act 1979.

Section 4.15(1)(a) – Statutory Planning Considerations

Section 4.15(1)(a) of the EP&A Act requires the consent authority to take into consideration:-

“(a) the provisions of:

- (i) *any environmental planning instrument, and*
- (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) *any development control plan, and*
- (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),*
that apply to the land to which the development application relates"

The modification does not alter any of the findings made by Council, the planning panel or the Land and Environment Court in the assessment of the DA in relation to relevant planning instruments, including the Pittwater LEP 2014, and the Pittwater DCP P21.

The allied health facility would primarily serve the residents of the RCF. This use is subservient to the dominant use of the site as a residential care facility and does not serve an independent purpose. The allied health area is located within the residential care facility and is accessed from within the facility and via the main entry porte cochere area. It occupies a small area relative to the overall building and provides services to meet the needs of the residents.

Section 4.15(1)(b) – Environmental, Social and Economic Impacts

Section 4.15(1)(b) of the EP&A Act requires the consent authority to consider:

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*

The relevant matters are addressed below.

Impacts on the Natural Environment

The proposed modifications will have no impact on the natural environment. As outlined in the arborist report accompanying the application no additional trees are to be removed and tree protection measures contained in the arborist report submitted with the development application and referred to in condition A0 of the consent.

Bushfire Impacts

The site is mapped as being prone to bushfire. The modifications have been reviewed by the bush fire consultant whose advice accompanies this application and which finds:

the proposed modifications do not alter the findings and/ or recommendations made within the Bushfire Hazard Assessment Report prepared by Building Code & Bushfire Hazard Solutions P/L (ref: 161187, dated 22nd February 2016, revised 9th August 2017) which accompanied the original Development Application.

Furthermore we are of the opinion that the proposed modifications do not alter the ability to satisfy the conditions of consent issued by the NSW Rural Fire Service in their General Terms of Approval for the original Development Application.

We are therefore in support of the section 4.55 application with no additional Bushfire Protection Measures other than those already detailed in the aforementioned Bushfire Hazard Assessment Report.

Acoustic Impacts

Consideration has been given to the acoustic implications of the changes including the raising of the level of the staff courtyard area. Acoustic Logic have reviewed the modifications, particularly the change to the level of the staff courtyard (report attached to this application) and their findings are:

There will be no significant change in noise emission from the use of the terrace area result of the increase on floor level of the Staff Courtyard:

- o Noise emitted to the Level 1 windows of the nearest dwelling (14 Banksia Parade) will remain the same as under the previous scheme.*
- o Noise emitted from the Staff Courtyard to the Ground Floor and outdoor areas of 14 Banksia Parade will marginally decrease as a result of the increase in floor level of the courtyard.*

As such, the proposed changes in the s4.55 application will be beneficial from an acoustic viewpoint.

Condition C9 of the consent states:

C9. The approved Acoustic Report referenced in this consent is to be amended to specifically detail the measures proposed to all plant and operating equipment to ensure that the noise levels associated with the operation of the proposed development is consistent with the Protection of the Environment Operations Act 1997 and the NSW EPA Industrial Noise Policy. The staff courtyard is to be enclosed by a masonry wall of minimum 2.1m height setback 3.5m from the site's western boundary. The actual height shall be as recommended by the amended Acoustic Report to minimise impacts upon adjoining properties to the west associated with the use of the courtyard, and the 24 hour use of the staff room (assuming both the window and door are open and the staff room is at maximum occupancy during the night). The recommendations of the amended Acoustic Report are to be included in the plans presented to obtain any Construction Certificate.

This condition will remain.

Visual Impacts

The solar panels are located in most instances oriented to internal courtyards with none oriented to Garden Street. Some panels are located on the roof that slopes to the west. However the low pitch of this roof and the setback from the building façade results in these panels not being visible from adjoining properties as can be seen in the revised section drawing.

Other Amenity Impacts

The modifications do not result in any additional overshadowing impacts. Acoustic impacts associated with the modification to the staff courtyard level are discussed above. The required acoustic screening will address any privacy impacts associated with this courtyard.

The changes do not result in any other privacy impacts. The additional northernmost upper level balconies over courtyard 5 are screened on the north side to maintain the privacy of the properties to the north.

Traffic and Parking Impacts

The traffic and parking implications of the proposed development as modified are considered in the Traffic Impact Assessment prepared by TTW accompanying this application. Four additional parking spaces are provided to meet the needs of the allied health facility.

BCA and Access Implications

As discussed in the letter provided by the BCA consultants attached to the application, the modifications do not alter the findings of the BCA report accompanying the development application that the development as modified achieves compliance with the BCA and Access to Premises Standards. BCA compliance will be addressed as part of a Construction Certificate without giving rise to inconsistencies with a development consent.

The modifications have been reviewed by the access consultant whose report is attached to this application. *The modifications have been reviewed and assessed by MGAC, in comparison to original DA design scheme and with respect to the relevant Access Codes and Standards. Following our review, we conclude that in general, the proposed S4.55 design changes can achieve reasonable access provisions for people with disability as set out in the requirements of the DDA Premises Standards, BCA and AS1428 Suite.*

Social and Economic Impacts

The social and economic impacts of the modifications are positive in providing additional services for residents in a sustainable manner.

Section 4.15(1)(c) – The Suitability of the Site

Section 4.15(1)(c) of the EP&A Act requires the consent authority to consider:

“(c) the suitability of the site for the development”

The original development consent as modified remains highly appropriate for the site. The development and design outcomes of the approved development will be unchanged.

Section 4.15(1)(d) – Submissions

Section 4.15(1)(d) of the EP&A Act requires the consent authority to consider:

“(d) any submissions made in accordance with this Act or the regulations”

