

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1466
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 10 DP 24952, 50 Starkey Street FORESTVILLE NSW 2087
Proposed Development:	Use of premises as a Permanent Group Home
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ashot Nazarian Marie Nazarian
Applicant:	Sunnyfield Limited

Application Lodged:	23/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	01/12/2020 to 15/12/2020
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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Executive Summary

The proposal is for the regularisation of the use of the existing dwelling as a group home. The dwelling currently accommodates five (5) residents with intellectual disabilities, and has been operating as a group home (without approval) for an extended period of time. No construction works are proposed.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and an appropriate use for the subject site.

Council received submissions from 10 adjoining neighbours, raising concerns with the proposed use as a group home, parking, waste and noise. These submissions are considered to have been addressed to a reasonable degree by conditions of consent, and the Plan of Management provided by the

applicant.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The subject site is currently operating as a permanent group home without development consent. The intention of this application is to regularise the use as a permanent group home, pursuant to the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009. No physical works are proposed.

The application states that the site provides permanent residential accommodation to five (5) people. While the residents have intellectual disabilities requiring some degree of care, the people that reside in the dwelling are 'high functioning' and as such do not require twenty-four-hour care. The majority of onsite and support and care services is subsequently provided by Sunnyfield (the applicant) employees at this site between 10:00am to 2:00pm.

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

Warringah Development Control Plan - C3 Parking Facilities

SITE DESCRIPTION

Property Description:	Lot 10 DP 24952 , 50 Starkey Street FORESTVILLE NSW 2087
Detailed Site Description:	The site is a corner lot located to the north west of the intersection of Starkey Street and Wirrilda Way. It is irregular in shape, and has an area of approximately 686sqm.

There is an existing dwelling on site, with a garage beneath the living level accessed from Starkey Street, and another hardstand parking space in the south west corner of the site accessed from Wirrilda Way. There is an existing ramp from this parking space to the dwelling. The site includes a paved area to the rear, and is generally well landscaped with vegetation of various heights.

Surrounding development consists generally of detached dwellings.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. The applicant has stated that the premises has been used as a permanent group home without development consent for an extended period of time. A search of Council's records has revealed the following relevant history:

DA2012/0227 - Council issued consent on 31/05/2012 for alterations and additions to a dwelling house. These works approved included a sliding gate to the existing car parking in the southwest corner of the site, a ramp for disabled access from the car park to the rear of the dwelling, and minor internal alterations for access.

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – 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)	<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 of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 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. <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 of consent. <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 of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.

Section 4.15 Matters for Consideration'	Comments
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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

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 from 01/12/2020 to 15/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Louise McManamon	46 Starkey Street FORESTVILLE NSW 2087
Mr Peter Charleson	6 Wirrilda Way FORESTVILLE NSW 2087
Mr John Maxwell Gercken	48 Starkey Street FORESTVILLE NSW 2087
Ms Rose Mary Loughnane	108 Cook Street FORESTVILLE NSW 2087
James Leong	2 Wirrilda Way FORESTVILLE NSW 2087
Mrs Tina Murdoch	56 Starkey Street FORESTVILLE NSW 2087
Gregory Robert Gudgeon	27 Blandford Street COLLAROY PLATEAU NSW 2097
Mrs Gladys Maria Margetts	58 Starkey Street FORESTVILLE NSW 2087
Mr Con Michael Cotsios	115 Cook Street FORESTVILLE NSW 2087

Name:	Address:
Mr Anthony Paul Williamson	8 Vines Avenue FORESTVILLE NSW 2087

The following issues were raised in the submissions and each have been addressed below:

- Conversion to boarding house / halfway house / similar
- Parking and traffic
- Oversupply of group homes / boarding houses
- Waste
- Noise

The matters raised within the submissions are addressed as follows:

- **Conversion to boarding house / halfway house / similar**

Concerns were raised with respect to the future conversion of the proposed permanent group home to a boarding house, halfway house or similar. More specifically, concerns were raised that the definition of permanent group homes allows for 'socially disadvantaged' people to live there, and that this was an inappropriate use in the area. The objections raised concerns with safety and security, crime, drug use, violence, noise, parking, and devaluation of property as a result of the proposed use.

Comment:

Permanent group homes are a permissible use in the R2 low density residential zone, and as such must be considered as an appropriate use in the area under the applicable planning controls. In this case, the operators are a charity organisation that cater only to people with an intellectual disability, and do not cater to other people identified as socially disadvantaged in the SEPP, such as *"persons disadvantaged for reasons of alcohol or other drug dependence, extreme poverty, psychological disorder, delinquency or other disadvantage, and persons who, for reasons of domestic violence or upheaval, require protection"*.

In relation to later conversion to a boarding house, this is a separately defined use in the LEP, and would require a development consent should that ever be proposed. 'Halfway house' is not a defined use. However, it is understood that the submissions are more generally referring to the category of persons who may live in the group home, should the current operators (Sunnyfield) ever move on and another type of operator use the group home to house people other than those with an intellectual disability.

A number of the submissions received indicated that they had few issues with the accommodation of the current residents (people with an intellectual disability), but strongly objected to other types of potential residents (socially disadvantaged persons as defined in the SEPP). In response to the submissions the applicants have suggested a condition be imposed in the consent as follows:

"The group home which is the subject of this consent is to provide permanent household accommodation for people with a disability only."

However, State Environmental Planning Policy (Affordable Rental Housing) 2009 prevents this condition from being imposed (see discussion under SEPP ARH in this report).

The building that the use is proposed to be carried out in is a relatively standard residential

dwelling on a 686sqm block of land, with normal setbacks to the northern and western side boundaries, and includes existing facilities for access for people with a disability. The orientation and design of the existing building itself does not give rise to any particular safety and security issues, noise, or other environmental impacts that might lead to the proposed use being considered inappropriate or unsuitable for the building / site. Nor does the surrounding neighbourhood have any particularly unusual attributes or circumstance that might cause the permissible use in the zone to be considered unsuitable. The above condition is included in the recommended conditions of consent, as it has been volunteered by the applicant in response to the submissions. However, the objections are not generally supported in this regard.

- **Parking and traffic**

Concerns were raised in relation to parking, and in particular that on street parking should not be used by the group home. Further concerns were raised that Starkey Street is steep in this location, and that vehicles regularly break the speed limit.

Comment:

This issue has been assessed in more detail under Clause C3 Parking Facilities in this report. The site currently contains space for four vehicles to park on site. However, the residents that are to be housed in the group home generally do not drive, and the parking demand is only likely to be taken up temporarily by a shared vehicle (driven by staff) for the residents, and staff parking. Further to this, ample on street parking has been available during two separate site visits during the assessment, though this is not expected to be required given the parking available on site. Parking provision is considered to be adequate in this regard. There is no change to the existing configuration of the site with regard to driveway access.

- **Oversupply of group homes / boarding houses**

Concerns were raised that there was an oversupply of group homes and boarding houses in the area, and that no more should be permitted.

Comment:

Under Clause 46 of SEPP (Affordable Rental Housing) Council cannot *"refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home"*. Council's Strategic Planning department and Social Planning & Services department were both consulted, and Council has made no wider assessments of the community need for group homes. As such, Council could not refuse the application based on this issue.

In relation to the individual group home applied for in this application, the fact that the dwelling has been used as a group home for an extended period of time (albeit without approval) would tend to indicate it is more likely that there is in fact a community need for this use. The submissions are not supported in this regard.

- **Waste**

Concerns were raised that bins are not properly managed on site leading to birds scattering garbage.

Comment:

The Plan of Management submitted by the applicant includes provisions for management of waste bins by the onsite manager. This includes *"Organising waste, recycling and bulky waste collection services as needed for the site, maintaining bin storage areas, placing waste and recycling bins out for collection no earlier than 2pm the day before collection and withdrawing*

them no later than 7pm on the day of service, regular cleaning of bins and waste storage areas/rooms, and managing litter and illegal dumping onsite. The manager is also responsible for coordinating prompt removal of dumped items onsite and/or at the kerbside".

The Plan of Management also requires that a complaints register be maintained and available for inspection by Council, and provides contact details. Ongoing compliance with the Plan of Management is a recommended condition of consent, and the formalisation of a development consent for the use, including the Plan of Management, is likely to improve management of this issue. Subject to this condition, the submissions are considered to be reasonably satisfied.

- **Noise**

Concerns were raised with regard to noise caused by 24 hour staff on site.

Comment:

The Plan of Management includes measures to restrict noise from the premises, including:

- Operating hours of outdoor common areas e.g. No use of the outdoor areas permitted after 10.00pm.
- Visitor policy including maximum guests per room, visitors not permitted after 10.00pm
- Activities and noise - Loud music or television noise is not permitted after 10.00pm.
- Parties or gatherings are not permitted upon the premises after 10.00pm.

Given these restrictions, the proposal is unlikely to cause any unreasonable noise impacts, and will be more heavily restricted than a normal residential dwelling. As discussed above, the Plan of Management also requires that a complaint register be kept, available for inspection by Council, which may be used to manage any future noise disturbances if they arise in future.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage. Planner's comment: With regard to the note above, the referral response has not provided any conditions required to be carried out at Construction Certificate stage. There are not building works proposed with this application, and no Construction Certificate is required.

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)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 7: Group homes

Clause 42 Definitions:

(1) In this Division —

group home means a permanent group home or a transitional group home.

permanent group home means a dwelling—

(a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and

(b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged, but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.

Comment:

The proposal is for a permanent group home for people with a disability.

Clause 43 Development in prescribed zones

(1) Development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone may be carried out—

(a) without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or

(b) with consent in any other case.

(2) Division 1 of Part 2 of State Environmental Planning Policy (Infrastructure) 2007 applies in respect of development carried out by or on behalf of a public authority under subclause (1) and, in the application of that Division, any reference in that Division to that Policy is taken to be a reference to this clause.

Comment:

The site is zoned R2 Low Density Residential, which is a prescribed zone. However, the applicant is not a public authority or working on behalf of a public authority. As such, development consent is being sought.

Clause 46 Determination of development applications

(1) A consent authority must not—

(a) refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or

(b) impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.

(2) This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.

Comment:

The proposal is recommended for approval. Council has not made any wider assessment of the community need for group homes.

In response to objections raised as part of the notification of the development application, Sunnyfield (the operator) proposed that a condition of consent be imposed to ensure the group home is only used as accommodation for people with a disability. The proposed condition is to read as follows:

"The group home which is the subject of this consent is to provide permanent household accommodation for people with a disability only".

However, this condition conflicts with the requirement in clause 46(1)(b) above to *"not impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home"*. As such, the proposed condition has not been included in the recommended conditions of consent.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

No building works are proposed. The application is for the use of the existing building only.

Warringah Development Control Plan

Built Form Controls

No building works are proposed. The application is for the use of the existing building only.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D8 Privacy	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes

Detailed Assessment

C3 Parking Facilities

Appendix 1 states that parking rates for group homes comparisons should be made with developments for a similar purpose. The application notes that the scale of the group home proposed (with 5 residents) is similar in scale to a dwelling house (which requires two car spaces) in terms of parking demand. The application further notes that there is space for four vehicles to park on site, and goes on to state that *"Sunnyfield group home residents typically do not drive, the only traffic generation associated with these sites are Sunnyfield carers/employees; a van/people mover is otherwise used by Sunnyfield staff to transport residents to/from the site. The four (4) car parking spaces are therefore capable of meeting the parking demand generated by this proposed use."*

The site is also located within walking distance of bus stops providing access to Chatswood and Sydney CBD.

The parking space located in the south western corner of the site includes an access ramp to the house for people with a disability.

Given that the main parking demand is likely to arise from the one or two staff on site at any one time, and the existing spaces available, the provision for parking on site is considered to be acceptable.

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 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment

of this application.

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;
- Warringah Local Environment Plan;
- Warringah 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1466 for Use of premises as a Permanent Group Home on land at Lot 10 DP 24952, 50 Starkey Street, FORESTVILLE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of Management for proposed group home at 50 Starkey Street, Forestville (available via the Application Search on Council's Website)	Not dated	Not named

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. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Permanent group home.

A permanent group home is defined as:

“permanent group home means a dwelling—

(a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and

(b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,

but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.”

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

3. **Compliance with Standards**

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

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