

30 September 2020

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

## **SECTION 4.55(1A) MODIFICATION APPLICATION TO DA2018/1332 Glenaeon Retirement Village – 199 & 207 Forest Way, Belrose**

This application has been prepared by Ethos Urban on behalf of Lendlease-Retirement Living (LL-RL) 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 Glenaeon Retirement Village at 199 & 207 Forest Way, Belrose (the site).

As discussed in **Section 2.0**, the proposed modification seeks consent for the removal of one tree relating to the original development application and to allow for the installation of an Ausgrid substation. For completeness, we have also included the removal of the Coco Palms that have been given separate approval to remove from Council's Tree Manager as they are exempt species on Council land.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in Section 4.55(1A) of the EP&A Act. This application is accompanied by Ausgrid approved plans which followed the determination of the original development application DA2018/1332 (**Attachment A**).

### **1.0 Consent proposed to be modified**

Development consent DA2018/1332 was granted by the Sydney North Planning Panel on 1 May 2019 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 consent has been modified on two (2) previous occasions:

- Section 4.55(1a) Modification Application (Mod2019/0307), which was approved by Council on 1 August 2019, and amended a number of conditions to enable the staging of Construction Certificates and Occupation Certificates for the development; and
- Section 4.55(1a) Modification Application (Mod2019/0308), which was also approved by Council on 1 August 2019, and removed the requirement to provide Section 7.12 developer contributions on the grounds that the facility is to be run by a not-for-profit service provider; Catholic Healthcare.

Also, the following three Modification Applications are currently under assessment by Council:

- Section 4.55(1A) Modification Application (Mod2020/0299) which is currently under assessment by Council and relates to minor design development refinements and discrepancies in the approved architectural plans;
- Section 4.55(1A) Modification Application (Mod2020/0365) which is currently under assessment and relates to amendments to condition 11 of the development consent; and
- Section 4.55(2) Modification Application (Mod2020/0431), which is currently under assessment and relates to the reintroduction of Building D.

This application represents the sixth (6) modification application to date. It is noted that the proposed modification is also reflected in Mod2020/0431 and it is intended that this Modification Application be approved prior to Mod2020/0431 to allow for the construction of the Ausgrid substation. In accordance with the approved Ausgrid

plans (**Attachment A**), it is requested that this application be approved as a matter of priority in order to allow the construction and installation of the Ausgrid substation in 10 weeks' time.

## 2.0 Proposed modifications to the consent

### 2.1 Modifications to conditions

The proposed modification requires amendments to the conditions of consent. Words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in ***bold italics***. For clarity, only those plans and documents subject to change have been included below.

#### 39. Tree protection

(a) Existing trees which must be retained

- i. All trees not indicated for removal on the approved plans, unless exempt under relevant planning
- ii. Trees located on adjoining land
- iii. all road reserve trees and vegetation ***with the exception of tree 126 and those noted on the approved plans, Arboricultural Impact Assessment for 207 Forestway Belrose dated 31<sup>st</sup> July 2018 and the exempt tree species 127, 128, 129, 130, 131, 132, 133 and 134.***

Reason: Condition 39(a) is proposed to be amended to allow for the removal of the Coco Palms (Trees 127-134) and the removal of Tree 126 to allow for Ausgrid works to commence, in accordance with the approved Ausgrid plans that followed the determination of DA2018/1332. It is noted that the Coco Palms are exempt species.

#### 40. Project Arborist

1. A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
2. The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the approved Tree Protection Plan and Arboricultural Impact Assessment dated 31 July 2018 prepared by Footprint Green ***with the exception of the additional removal of Tree 126*** and the Arboricultural Impact Report dated 23 July 2018 prepared by Landscape Matrix and AS4970-2009 Protection of trees on development sites.
3. The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: Condition 40 is proposed to be amended to allow for the removal of Tree 126 in accordance with the approved Ausgrid plans to facilitate the installation of the kiosk.

## 3.0 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 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 development, as proposed to be modified, is substantially the same development as that originally approved in that:

- The proposed alterations do not substantially change the whole or essential character of the approved development. The development is consistent with that originally approved, self contained dwellings, car spaces, and the construction of a new residential aged care facility on the neighbouring lot;
- The modifications do not result in an increase the maximum height of buildings, or alter the approved floor space, and will not result in any changes to the approved buildings. The proposed modifications allow for the

removal of one tree and removal of exempt species to allow for the installation of the Ausgrid substation in accordance with the approved plans; and

- The qualitatively essential parts of the approved development all remain intact, including the overall built form and urban design, the impacts on surrounding development, traffic and parking, public domain, and residential amenity.

Accordingly, the cumulative modifications will result in a development that remains substantially the same as that originally approved.

## 4.0 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 and the reasons given by the consent authority for the grant of the original consent.

The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

### 4.1 Tree Removal

The Arboricultural Impact Assessment prepared by Footprint Green and dated 31 July 2018 for the original development application, identifies Tree 126 as *Angophora costata* (Sydney Red gum). The tree is identified as semi-mature twin trunk, in moderate health with a sparse thinning canopy with reduced leaf size. The Assessment noted that the third trunk on the eastern side has failed, leaving a wound area.

While the tree was not identified for removal during the preparation of the original development application, consultation with the project arborist has confirmed that the report does not require any amendments, and tree 126 may be removed. As well, consultation has been undertaken with Council’s Tree Services Manager, who did not raise concern with the removal of tree 126.

### 4.2 Impact on surrounding development

As discussed, the proposed modifications do not comprise any significant external changes that would alter the bulk or scale of the approved buildings on the site, and purely relates to the removal of one tree and removal of exempt species to allow Ausgrid works to commence on the site. Accordingly, the proposal will not change the approved impacts to surrounding development in terms of overshadowing, privacy or visual impacts or view sharing.

### 4.3 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 Planning Panel’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 minor proposed modifications will not undermine these original reasons for granting consent. The proposed changes do not alter the positive social benefits of the development, the permissibility of the development, or the development’s adherence to the desired future character of the area,

## 5.0 Conclusion

The proposed modifications relate to the removal of one tree and removal of exempt species to allow for the installation of the Ausgrid substation. These proposed modifications do not impinge on the approved bulk and scale, capacity of intended operation of the approved development. The proposed development remains substantially the same as that approved, and the proposed changes will not significantly or adversely alter the approved environmental impacts of the development.

In accordance with section 4.55(1A) of the EP&A Act, Council may modify the consent as:

- the proposed modification is of minimal environmental impact; and
- it is substantially the same development as development for which the consent was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.

Yours sincerely,



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