

15<sup>th</sup> November 2018

The General Manager  
Northern Beaches Council  
725 Pittwater Road  
DEE WHY NSW 2099

Dear Sir,

**Statement of Environmental Effects  
Modification of Development Consent DA219/2016  
Torrens Title Land Subdivision  
17 Maretimo Street, Balgowlah**

**1.0 Introduction**

On 9<sup>th</sup> November 2016 development consent DA219/2016 was granted for demolition of the existing garage, removal of trees, construction of a new driveway, four (4) hardstand car parking space, a vehicle turning platform, drainage works and a two (2) lot Torrens Title Land Subdivision.

This document forms a component of an application seeking the modification of the consent pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act).

Specifically, the application seeks a minor adjustment to the geometry of the proposed right of carriageway to facilitate the deletion of the approved vehicle turning platform (turntable) with the accompanying vehicle sweep path analysis demonstrating the acceptability of such outcome. The application also seeks the modification of the approved drainage plans as detailed on the accompanying drainage plans to enable direct connection of the charged system from Lot 2 to the street drainage system with the associated concept dwelling house design on Lot 1 not forming a component of the application.

The modifications sought will not compromise the subdivision/ future built/ residential amenity outcomes achieved through approval of the original application with this submission demonstrating that the modifications involve minimal environmental impact and that the development as modified represents substantially the same development as that originally approved.

Subject to Council undertaking the appropriate statutory notifications the application is appropriately dealt with by way of Section 4.55(1A) of the Act.

The modifications have been found to be acceptable when assessed against the heads of consideration pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act, 1979, as amended and in our opinion, are appropriate for the granting of consent.

## **2.0 Detail of modifications sought**

The application seeks a minor adjustment to the subdivision layout to enable the deletion of the approved vehicle turning platform (turntable) with the accompanying vehicle sweep path analysis demonstrating the acceptability of such outcome. The application also seeks the modification of the approved drainage plans as detailed on the accompanying drainage plans to enable direct connection of the charged system from Lot 2 to the street drainage system. The proposed modifications are depicted on the following plans:

- Amended plan of proposed subdivision drawing 1133SDa, sheet 1 of 1, dated 27<sup>th</sup> September 2018, prepared by Pinnacle Land Surveyors Pty Limited;
- Amended site plan drawing 1133SP, sheet 1 of 1, dated 27<sup>th</sup> September 2018, prepared by Pinnacle land Surveyors Pty Limited;
- Sweep Path Analysis drawings CV-000 to CV-03 Revision 1; prepared by Stellen Consulting; and
- Amended Stormwater Management Plans DR-000 to DR-002 Revision O, prepared by Stellen Consulting.

The result lots will have the following characteristics:

Proposed Lot 1	Approved	Proposed
Lot Area	356.8sqm (296.1sqm excluding access handle)	356.8sqm (281.9sqm excluding access handle)
Proposed Lot 2	Approved	Proposed
Lot Area	447.9sqm (379sqm excluding access handle)	447.9sqm (370.9sqm excluding access handle)

The approved allotment widths and depths are unaltered.

The application also proposes the modification/ deletion of the following conditions of development consent.

## **Conditions of Consent**

### Condition DA1

This condition will need to be modified to reference the amended plans and Statement of Environmental Effects.

## **3.0 Statutory Planning Considerations**

### **3.1 Section 4.55(1A) of the Environmental Planning and Assessment Act 1979**

Section 4.55(1A) of the Act provides that:

- (2) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:*
  - (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
  - (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), and*

.....

We have formed the considered opinion that the modifications proposed are minor and in consequential in terms of streetscape and/ or residential amenity impacts. The modifications go to matters of detailing and to that extent are appropriately described as of minimal environmental impact.

In answering the above threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls.

In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 per Bignold J.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in *Vacik Pty Ltd v Penrith City Council* (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

*“Substantially when used in the Section means essentially or materially or having the same essence.”*

What the abovementioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the approved development remains, in its modified state, an application proposing the Torrens Title subdivision of 1 Lot into 2 Lots and the provision of associated access and drainage. The subdivision and future building forms will continue to spatially relate to its surrounds and adjoining development in the same fashion as originally approved. The previously approved streetscape and residential amenity outcomes afforded by the original application are not compromised.

The Court in the authority of *Stavrides v Canada Bay City Council* [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was “substantially the same” as that originally. A number of those general principles are relevant to the subject application, namely:

- The proposed use does not change;
- Lot 1 remains of adequate size and dimension to accommodate a generally compliant dwelling house (subject of separate future development application);
- Vehicles to both lots will be able to enter the leave the site in a forward direction; and
- The Lots are able to be appropriately drained.

On the basis of the above analysis we regard the proposed modifications as being of minimal environmental impact and “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.55(1A) of the Act.

## 3.2 Manly Local Environmental Plan 2013

### 3.2.1 Minimum subdivision lot size

Pursuant to clause 4.1 the minimum subdivision Lot size for the land is 300sqm exclusive of the area of any access corridor/ ROW. The stated objectives of this clause are as follows:

- (a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
- (b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- (c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- (d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

This application seeks the modification of the approved ROW geometry to facilitate the deletion of the approved vehicle turning platform (turntable) with the accompanying vehicle sweep path analysis demonstrating the acceptability of such outcome. Whilst the gross area of the proposed Lots is unaltered the changes to ROW geometry has resulted in a slight increase in the area of the ROW as detailed below:

Proposed Lot 1	Approved	Proposed
Lot Area	356.8sqm (296.1sqm excluding access handle)	356.8sqm (281.9sqm excluding access handle)
Proposed Lot 2	Approved	Proposed
Lot Area	447.9sqm (379sqm excluding access handle)	447.9sqm (370.9sqm excluding access handle)

In this regard, after excluding the area of the access handle Proposed Lot 1 has an area of 281.9sqm which is non-compliant by 18.1sqm or 6%.

Whilst clause 4.6 does not apply to an application made pursuant to Section 4.55 of the Act the following assessment of the resultant lot sizes having regard to the objectives of the standard has found strict compliance to be both unreasonable and unnecessary as follows:

- The proposed allotment width and depth are unaltered with Lot 1 continuing to be capable of accommodating a generally compliant dwelling house form.
- The variation facilitates the deletion of the approved vehicle turning platform (turntable) with the accompanying vehicle sweep path analysis demonstrating the acceptability of such outcome. Whilst the gross area of the proposed Lots is unaltered the changes to ROW geometry has resulted in a slight increase in the area of the ROW. Such modification affords a superior access and parking outcome which with vehicles able to enter and exit in a forward direction without mechanical assistance.
- The location is generally characterised by a rectangular allotment and residential development pattern. There is an established precedent of allotments to the north and west of the site having been subdivided similar to the nature proposed. The proposal is compatible with this pattern and nature of development in this location and within the vicinity of the site. In summary, there is a precedent for the nature, scale and configuration of the land subdivision proposed.
- The site is of an appropriate size and configuration, unconstrained by any significant limiting environment characteristics to accommodate the proposal with future development on Lot 1 able to achieve acceptable streetscape outcomes.
- The proposed allotments are assessed as compatible with character of the residential development (their siting and design) within the local context consistent with the development pattern of allotments to the north and west.
- The land is ideally located within an area established for residential use, serviced by key infrastructure, open space, bus services and neighbourhood shops.

Council can be satisfied that the Lot sizes proposed satisfy the objectives of the standard and accordingly strict compliance is both unreasonable and unnecessary under the circumstances.

### **3.3 Manly Development Control Plan 2013**

The following controls are applicable to the development as proposed pursuant to MDCP 2013:

#### **Vehicle access and car parking**

The previously approved vehicle access is maintained along the northern side of proposed Lot 1. The application seeks a minor adjustment to the geometry of the proposed right of carriageway to facilitate the deletion of the approved vehicle turning platform (turntable) with the accompanying vehicle sweep path analysis prepared by Stellen Consulting demonstrating the acceptability of such outcome with vehicles able to enter and exit the site in a forward direction.

In summary, the proposal satisfies clause 4.1.6.1 of the DCP titled *'Parking Design and the Location of Garages, Carports or Hardstand Areas'* and the applicable Australian Standard in relation to sweep paths.

#### **Stormwater drainage**

The application also seeks the modification of the approved drainage plans as detailed on the accompanying drainage plans to enable direct connection of the charged system from Lot 2 to the street drainage system as detailed on the accompanying stormwater plans prepared by Stellen Consulting.

As the site falls away from the kerb and a charged roof gutter system is proposed this application seeks to dispose of the OSD requirement given runoff from the developed site (excluding the roofs which are discharged to the kerb) is less than State of Nature runoff. We rely on the accompanying catchment plan and detail DR-002(O) prepared by Stellen Consulting in this regard.

### **4.0 Conclusion**

The application seeks a minor adjustment to the geometry of the proposed right of carriageway to facilitate the deletion of the approved vehicle turning platform (turntable) with the accompanying vehicle sweep path analysis demonstrating the acceptability of such outcome. The application also seeks the modification of the approved drainage plans as detailed on the accompanying drainage plans to enable direct connection of the charged system from Lot 2 to the street drainage system with the associated concept dwelling house design on Lot 1 not forming a component of the application.

The modifications sought will not compromise the subdivision/ future built/ residential amenity outcomes achieved through approval of the original application with this submission demonstrating that the modifications involve minimal environmental impact and that the development as modified represents substantially the same development as that originally approved. Strict compliance with the minimum subdivision Lot size standard has been found to be both unreasonable and unnecessary under the circumstances.

Subject to Council undertaking the appropriate statutory notifications the application is appropriately dealt with by way of Section 4.55(1A) of the Act. The modifications have been found to be acceptable when assessed against the heads of consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended and in our opinion, are appropriate for the granting of consent.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

**BOSTON BLYTH FLEMING PTY LIMITED**

A handwritten signature in black ink, appearing to read 'Greg Boston', with a stylized flourish at the end.

**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

**Director**