

7 September 2021

The Chief Executive Officer
Northern Beaches Council
Attention: Anna Williams (Manager, Development Assessment)

Dear Sir / Madam,

52 Abbott Road, North Curl Curl
ADDENDUM - STATEMENT OF ENVIRONMENTAL EFFECTS
DA2021/0593 – Demolition works and subdivision of one lot into two lots

BBF Town Planners are instructed by the applicant to submit this additional information in support of the subject Development Application. This responds to matters raised in the additional information request letter from Council dated 19 August 2021.

1 Development Engineering

The additional information request states:

“Clause C1 (Subdivision) of the Warringah DCP

The applicant proposed to subdivide the existing lot into 2. Development Engineering has reviewed the proposal. The application cannot be supported as the proposed accessway doesn't comply with the clause C1 of Council's Warringah DCP2011.

In accordance with the above DCP, the minimum width of the accessway must be 3.5 m. However, the proposed accessway is about 2.8 m wide.

As such, the applicant cannot be supported due to the clause C1 of Council's Warringah DCP.”

The following submissions are made in response.

2 Proposed amendment

It is proposed to amend the application to provide an easement along the eastern edge of the existing dwelling (within proposed Lot 1).

Such a provision on-title would require the width of the accessway to be increased from 2.9 meters to 3.5 when a new dwelling house is proposed on the property (within proposed lot 1).

This is assessed as an appropriate and reasonable response to the issues raised, having regard to the circumstances of the matter, which are summarised as follows:

2.1 Range of vehicle access improvements proposed

A dual occupancy is approved on the property. The lawful existing development does not meet contemporary controls with regards to vehicle access widths, length, provision of a passing bay, 85th percentile turning and manoeuvring areas. The applicant proposes civil works to improve the existing development's compliance with contemporary standards.

2 car parking spaces are provided for each proposed allotment, and provision is made by the proposal for the vehicles to enter and leave the site in a forward motion facilitated by a new passing bay. These characteristics are part of the existing development.

2.2 The property benefits from existing use rights.

The current development on the property is lawful and benefits from previous approvals, namely:

- Development consent 87/464 was approved by Warringah Council on 17 December 1987 for 'erection of the second dwelling house for dual occupancy'.
- Development consent 96/128 was approved by Warringah Council on 6 May 1996 for 'alterations and additions to an existing dwelling within a consented dual occupancy'.

Under the Warringah LEP 2011, dual occupancy development is prohibited within the R2 zone. In these circumstances, the property benefits from existing use rights as of December 2011 when WLEP 2011 came into effect.

2.3 Flexibility in the application of the numerical control is appropriate in circumstances

The NSW Land and Environment Court's planning principle established in Fodor is applicable, wherein it states that planning controls that limit the size of a proposal have no application when existing use rights apply. It states:

15 Thus the consequence of preserving existing use rights is that zone objectives and planning controls that limit the size of a proposal (ie floor space ratio, height and setback) have no application.

The existing approved dual occupancy development doesn't meet various DCP requirements for access, but the proposed development will improve the current access circumstances, without any intensification of the development upon the property. In doing so it addresses the objectives of the DCP's vehicle access requirements.

The accompanying civil engineering submission confirms that the application, as proposed, meets the applicable standards for a domestic driveway (Australian Standard AS2890 for off street parking).

Whilst not an objective of the DCP, investigation of the access requirements of common emergency service vehicles has been undertaken. It confirms that they would be able to use the accessway if needed.

Under clause (3A)(b) of Section 4.15 of the Act, the consent authority is to be flexible in applying DCP controls when the objectives of those controls have been satisfied. The above circumstances provide justification for applying flexibility to the driveway width control.

2.4 Potential for a future change of use

It is acknowledged that the R2 zone permits other land uses with development consent. Any potential future change of use would be subject to assessment of its access requirements. Such

an assessment provides the necessary accountability without any presumption that approval of the access width proposed for the existing dual occupancy would be suitable for other uses.

3 Civil engineering assessment

This additional information submission is accompanied and supported by a civil engineering assessment by Taylor consulting engineers. It confirms that the proposed driveway:

- width meets Australian Standard AS2890 for off-street parking for a domestic driveway.
- width is suitable for emergency vehicle (ambulance) access
- width is suitable for residential vehicle access
- has suitable vertical clearance in relation to the above eave heights.

4 Summary

The proposed driveway width variation is modest and temporary.

Appropriate provision is made by the application for achievement of a 3.5m wide vehicle access in the medium to longer term in strict compliance with the numerical control

In the short to medium term the proposed driveway width is compensated for by a range of significant improvements to the existing vehicle access circumstances that are approved on the property. Through these improvements the proposed development satisfies the objectives of the DCP's vehicle access controls

Should the proposal to provide an easement along the eastern edge of the existing dwelling (within proposed Lot 1) be satisfactory, the applicant would amend the development application and submit additional information assist Council in determining the DA.

Should council not be of a mind to support the DA, as proposed, and to be amended as described herein, the range of vehicle access and safety improvements proposed, would not be realised for the property.

5 Conclusion

We trust that the above provides clarification of the matters raised. The applicants respectfully request consideration of the above in the assessment of the DA. Please do not hesitate to contact me if you wish to clarify any of these matters.

Yours sincerely,



Michael Haynes
Director - BBF Town Planners