

February 2018

The General Manager

Northern Beaches Council

PO Box 882

Mona Vale NSW 1660

Attention: Planning Department

Dear Sir/ Madam,

10 Fern Creek Road, Warriewood

S96 AA application – Statement of Environmental Effects

This Statement of Environmental Effects (SEE) has been prepared for PIC 10 Warriewood Pty Ltd. to accompany a Section 96 application (S96) to Northern Beaches Council (the Council).

The proposal seeks to amend the conditional consent for Development Application No. N0460/16 by the Land and Environment Court under the provision of the Environmental Planning and Assessment Act 1979 dated 13 April 2017, which granted the following approval under appeal No. 2017/00022807:

The construction of a residential flat building on a yet to be created lot (Lot 21) at 10 Fern Creek Road, Warriewood



Figure 1. Subject site 10 Fern Creek Road, Warriewood and surrounding locality (SIX Maps)

Current Proposal in this Subject Section 96 (AA) Proposed Amendments

This SEE has been prepared to accompany the architectural plans prepared by Ghazi Al Ali Architect Pty Ltd., Project Number 34.17, dated 13/02/2018 in respect to 10 Fern Creek Road, Warriewood, where is legally described as Lot 6 DP736962.

The following table demonstrates the modifications in detail.

List of Amendments	
Basement 01 & 02	<ul style="list-style-type: none"> • One stair has been deleted as part of performance solution. • Storage cages have been relocated from the ground floor to basement 01 & 02
Ground Floor	<ul style="list-style-type: none"> • A new diesel pump room has been included on ground floor. • New Electrical Main Distribution Board (MDB) has been included on ground floor. • The storage area has been reduced and storage cages have been reallocated. • The balcony area for Studio 1 has been increased.

Section 96 of the Environmental Planning and Assessment Act 1979 (the Act).

The provisions under S96 of the Act allow modifications of consents to be made, provided that the modified proposal is substantially the same development as the development for which the consent was originally granted. The minor changes of this Application are consistent with the provisions and the development will remain substantially the same. This proposal involves changes in the building layout, and thus is considered to be categorised as a Section 96 (AA) Application.

Section 96AA of the Environmental Planning and Assessment Act 1979 provides in part as follows.

96AA Modification by consent authorities of consents granted by the Court

(1) 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 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

(b) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, and

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

(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 79C (1) as are of relevance to the development the subject of the application.

(1B) Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995, is not to be modified unless:

(a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or

(b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

This subsection does not apply to State significant development.

(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.

(4) (Repealed)

Under Section 96AA (1) (a) Council must be satisfied that the development is substantially the same development as what was approved in the original consent. A number of decisions in the NSW Land and Environment Court provide guidance in determining whether the development is “substantially the same” development.

In *Vacik Pty Ltd v Penrith City Council* 1992 Stein J stated,

“In my opinion ‘substantially’ when used in this section means essentially or materially or having the same essence”

In *Moto Projects (No 2) Pty Ltd v North Sydney* 1999, the principle was established that both “qualitative and quantitative aspects of the development” should be substantially the same.

The amended development will be substantially the same as approved under the Consent No. N0460/16 (Case No. 2017/00022807) given the following:

- There will be no fundamental changes to the uses and definition of the approved development.
- There will be no fundamental changes to the totality of the development.

- There will be no external difference in terms of building mass.
- As indicated by the following assessment the environmental planning impacts would be minor and acceptable.

Environmental Assessment

The minor changes in this proposal are of very few potential environmental impacts. These potential environmental impacts are addressed below.

1. The proposed addition of diesel pump room and Electrical Main Distribution Board (MDB) respond to construction requirement and serve the purpose of practical operation of the development.

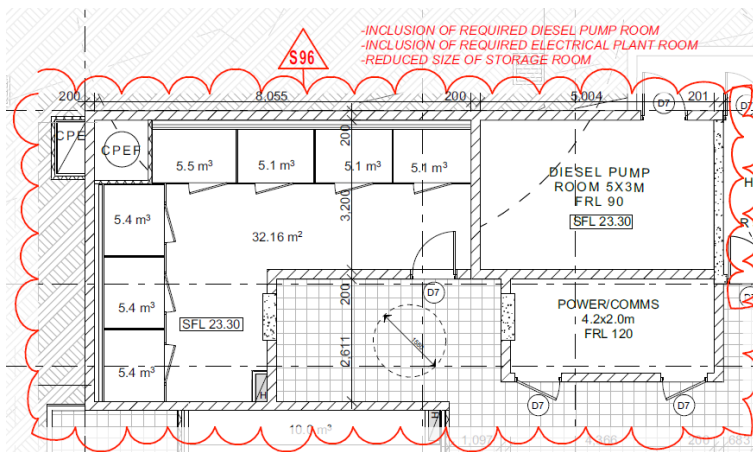


Figure 2. Addition of diesel pump room and MDB on ground floor (Extract from Architectural Plan Ground Floor, A 02.003)

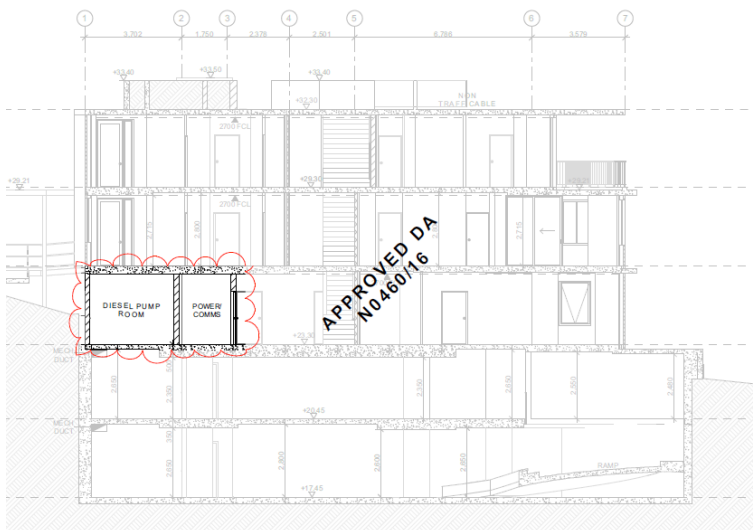


Figure 3. Addition of diesel pump room and MDB (Extract from Architectural Plan Section CC, A 04.001)

These amendments within the building are unlikely to induce any visual impacts to the building and streetscape.

2. As a consequence of addition of diesel pump room and MDB, the storage area has been reduced. As part of storage has been relocated from the ground floor to basements, the proposed storage continues to comply with the ADG requirement and will not affect amenity for future residents.

3. As certified in the attached statement provided by Innova Services Fire Safety Engineering, 'a Performance Solution (the removal of fire stair) can be developed to address the provision of a single exit from the basement levels, and to ensure the proposed development can achieve compliance with the relevant Performance Requirements of the BCA' (page 7).
4. The removal of one stair in basement provides additional space for carwash bay, oil separator and maintenance bathroom, as well as the balcony for Studio 1 on ground floor. These amendments improve amenity for future residents.

According to the above mentioned environmental assessment, the amended application would have insignificant environmental planning outcomes, and consequently it should warrant an approval.

Yours sincerely

Morphology Design Associates Pty Ltd.