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RE: DA2018/1708 - 197 Sydney Road FAIRLIGHT NSW 2094

Submission Development Application # DA2018/1708: Demolition works and construction of a boarding house

Summary

While the proposed development is permissible under the LEP, the provided assessments fall short of the standard that would enable Council to make an informed and robust decision in exercise of its authority under s4.15 of the Environmental Planning and Assessment Act 1979. The absence of quantitative assessment and due consideration of impact to the existing environment during construction and operation prevents Council from being in an informed position to reasonably exercise its consent authority.

The area is zoned R1, the objectives of the zoning are:

Objectives of zone

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Whilst this application is permissible with consent, it is misleading as to the actual use of the development. It is clear that the use will be for short to medium term holiday accommodation that is applicable for the zoning SP3 and B6. These uses are not permissible under the current zoning, and is not aligned with the objectives of the zoning.

This is an inappropriate use of the SEPP ARH 2009 to circumvent the zoning of the area. Should this application be pressed it should seek appropriate re-zoning of the site for the intended use.

The SEE itself seems to lack an understanding and appreciation of how to identify existing environmental values, quantify assess and present the nature, scale and extent of likely impacts associated with the proposed development against prescribed and regulatory criteria, and to accurately and concisely present a suite of reasonable and feasible mitigation and control measures that would reasonably be expected to be implemented for such a development having regard to the nature, scale and extent of likely impacts.

There are numerous portions of the SEE that either duplicate the project description to represent the assessment of existing environmental value and impact or alternately attempt to defer any actual assessment of impact to an external authority - typically RMS:

"This road is managed and controlled by the RMS and therefore it is anticipated the application

will be referred to the RMS for consideration and comment."

In the alternative the applicant repeatedly seeks to rely on Council's process of preparing conditions of development consent to represent both the assessment and the mitigation in lieu of their consideration and documentation within the assessment and application itself.

Specific Comment

The Applicant has failed to consider addressing the requirements of Reg 92 of the Environmental Planning and Assessment Regulation 2000. There is no address of the provisions of Australian Standard AS 2601--1991: The Demolition of Structures, (Standards Australia) for the intended demolition of buildings.

The Applicant has not demonstrated compliance with the non-discretionary development standards contained within SEPP (Infrastructure) Cl. 101. There is insufficient detail in either the SEE, the traffic assessment and the noise impact assessment to enable Council to be

"satisfied that the safety, efficiency and ongoing operation of the classified road will not be adversely affected as a result of the development, and the development is of a type that is not sensitive to traffic noise or emissions or has been designed to ameliorate those impacts."

The assessment appears to intentionally ignore the broader provisions of ISEPP (2007) as follows (emphasis added):

- (2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:
- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and
 - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
 - (i) the design of the vehicular access to the land, or
 - (ii) the emission of smoke or dust from the development, or
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

102 Impact of road noise or vibration on non-road development

(1) This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of RMS) and that the consent authority considers is likely to be adversely affected by road noise or vibration:

- (a) residential accommodation,
- (2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.
- (3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:
 - (a) in any bedroom in the residential accommodation-35 dB(A) at any time between 10 pm and 7 am,
 - (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)-40 dB(A) at any time.

The provided noise assessment identifies LAeq for night time at 45 dB(A). No analysis of bedroom impact not exceeding 35 dB(A).

There is inadequate address of the items emphasised above that are required to be considered by Council. In which case Council's options in considering the application in the absence of the required information are constrained and "the consent authority must not grant consent to the development".

The assessment expressly references annual average vehicle movements per day for roads feeding into Sydney road, with Pittwater road nominated as approximately 41,000 per day, yet is noticeably silent in relation to the figure for Sydney Road at the point of the development. This absence of quantification denies Council the ability to consider whether the 20,000 vpd threshold is triggered requiring specific assessment of safety, efficient road performance, noise and emissions in respect of the development, as required under ISEPP.

2.2. RoadNetwork

The road hierarchy in the vicinity of the site is shown by Figure 1 overleaf, with the following roads considered noteworthy:

- Sydney Road: forms part of an RMS Main Road, MR 159. Sydney Road generally runs in an east-west direction intersecting Belgrave Street in the east and Frenchs Forest Road / Ethel Street in the west. It is subject to 60km/h speed zoning restrictions and accommodates (2) lanes of traffic in each direction. Near the site, unrestricted parallel parking is permitted along both kerbsides of Sydney Road.
- Pittwater Road: forms part of an RMS Main Road, MR 159. Pittwater Road runs in a north-south direction between Mona Vale in the north and Fairlight in the south. Near the site, it is subject to 60km/h speed zoning restrictions and accommodates two (2) lanes of traffic in each direction. Pittwater Road carries approximately 41,000 vehicles per day (vpd).
- Condamine Street: forms part of an RMS Main Road, MR 164 and an RMS Secondary Road, SR 2112. Condamine Street runs in a north-south direction intersecting Pittwater Road in the north and Ernest Street in the south. It is subject to 60km/h speed zoning restrictions and accommodates two (2) lanes of traffic in both directions, carrying approximately 21,000 vpd.

The absence of quantitative assessment of impact (noise, air emissions and traffic volumes), absence of a road safety audit and the absence of a robust consideration of construction and operation traffic management and movements demonstrates a failure to comply with a non-discretionary development standard contained within an environmental planning instrument (Environmental Planning and Assessment Act 1979, s4.15(3))

The assessment variously anticipates RMS being involved in either an assessment or referral stage and alternately that it is not:

Consideration of application of Schedule 3 Traffic-generating development to be referred to Roads and Maritime Services

Having regard for the above, it is evident that whilst the development will access a classified arterial road (Sydney Road), it incorporates less than 50 car parking spaces. Accordingly, the development is not of a scale that requires referral of the DA to the Roads and Maritime Services (RMS) under the provisions of the State Environmental Planning Policy (Infrastructure) 2007.

The Traffic Impact Assessment Report (provided at Appendix H) is referenced to identify "the development is designed to comply with relevant Australian Standards with respect to access and off street parking and will have no adverse impact on the efficiency or function of the local traffic network."

However, nowhere in the document is there an assessment provided of the potential impact of right hand turns into or out of the proposed development from or onto Sydney Road. Nothing that identifies any means to prevent a right turn exit or right turn entry into the intended driveway and carpark.

No mention is made of a road safety audit given the permissible kerbside parking in this area reducing Sydney road to a single lane, with an expected likelihood of traffic flow obstruction and queuing, as a result of occupants seeking to make a right turn entry from Sydney Road and presenting a sight line obstruction hazard for vehicles travelling along Sydney Road and those exiting the premises.

There is no Construction traffic management plan or indication of intended/required mitigations. This aspect has been left to be a response to post-approval Council conditioning of the proposed development within the consent instrument.

There is insufficient consideration and quantification of construction traffic volumes, plant and equipment and hours of construction. Multiple crane use is implied within the assessment, yet no quantitative assessment or description of plant and equipment specifications is provided to inform an understanding and appreciation of the potential for impact and the need for mitigation or controls. Nothing indicating flottage requirements (to and from site, inclusive of any out of hours work requirements for oversized plant) or traffic management requirements and impacts to Sydney road for anticipated crane set up and use has been provided, considered or formally assessed within the application.

No details are provided on temporary site construction workforce, site workforce parking arrangements or amenities, site compound, security fencing, signage, notifications or site management.

It is noted that visitors to the premises are anticipated, however there is no assessment of impact in respect of off-street or on-street parking arrangements.

The submitted SEE expressly references the assessment report associated with the earlier approval of DA20/2017 having identified and supported non-compliances in relation to front, rear and side building setbacks and landscaped area. The application and assessment attempts to rely on Council's approval of these non-compliances as an assessment of impact and demonstration of the acceptability of impact for the current application.

This approach calls into question the actual assessment of the proposal and the validity of the provided assessment. Further, it demonstrates an inability for Council to duly exercise its authority under s 4.15 in relation to the application at hand in reliance on the provided assessment documentation.

In consideration of both the demolition and excavation phases of the proposed development there is no clear identification of plant and equipment to be used, no quantitative assessment of their respective sound power levels and no qualitative description of demolition and excavation methodology or scheduling, and no quantitative assessment or waste classification of construction and demolition waste materials.

The provided noise assessment doesn't address sound power levels during construction from mobile plant and excavations including stated intent for piercing and use of rock saws.

There is no quantitative assessment provided for stormwater detention, sizing of basins for a specified range of ARI events, attenuation capacity, confirmation of provision for overland flow, and no treatment methodology for sediment laden water, but for detention and subsequent discharge into Sydney Road kerbside drainage - which in itself would appear to amount to an intentional breach of s120 of the Protection of the Environment Operations Act 1997.

There is an absence of consideration of cumulative assessment of this development with other progressing or intended development.

There is insufficient justification for the need for this type of development within the area with reference to both existing demand and existing facilities and any local, State or Commonwealth policy driver that the proposed development purports to support or align to. The assessment appears to rely heavily on the existence of the SEPP (Affordable Rental Housing) 2009 as its justification, rather than having a distinct justification on its own merits, that is in turn supported by the provisions of the SEPP (ARH).

There is inadequate demonstration of how the proposed boarding house development fits within the definition of Affordable Housing under the SEPP (ARH) and how this compliance would be implemented throughout operation:

6 Affordable housing

Note. The Act defines affordable housing as follows:

affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

(1) In this Policy, a household is taken to be a very low income household, low income household or moderate income household if the household:

(a) has a gross income that is less than 120 per cent of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or

(b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.

(2) In this Policy, residential development is taken to be for the purposes of affordable housing if the development is on land owned by the Land and Housing Corporation.

Waste management is poorly quantified. Indication of use of a private contractor is provided, however, it is equally identified that in the absence of a private contractor that has an estimated servicing need for the premises of twice per week, the local weekly Council service would be utilised.

While bin location to service this "contingency" is identified, there is no real consideration of the impact of 75 waste bins being lined up along Sydney Road for kerbside collection. This absence of consideration in the assessment is further highlighted by the stated need for twice per week pick up by private contractor, or contingency for a single pick up by Council kerbside pickup, which would indicate a surplus of waste being left kerbside, potentially exceeding bin capacity.

SEPP 55 is referenced in respect of the presence of asbestos and lead containing paint - and therefore potential for lead containing dust and presence in soils. No controls are specified to define, ameliorate or prevent exposure and dispersion. The assessment talks to land use not presence and management in respect of existing proposed demolition wastes and excavation activities. The assessment identifies "chemically impacted soil would be removed from the site during redevelopment." , however, does not identify any quantitative waste classification. Further, there is no indication as to whether works would be considered Category 1 or Category 2 activities under SEPP 55 and no consideration of any potential requirements under the Contaminated Land Management Act 1997.

The assessment recommends demolition activities are to be undertaken following a hazmat survey, which should have been undertaken to inform the consent application and therefore provide Council with a high level of confidence regarding the range of requisite mitigations and controls for the proposed controls. 5.2.2 defers any such consideration to conditions of the development consent - so not available for Council to undertake the required level of consideration under s 4.15 of the EP&A Act.

The proposed development includes excavation to facilitate construction of basement parking and by virtue of sloping site will also result in some areas of habitable floor space being partially below natural ground level. There is no indication of compliance requirements or health and safety measures within the SEE document. There is no quantification of excavation depth or quantification of "partially below natural ground level".

It is stated that there is an absence of groundwater however, no consideration is provided of the proportionate contribution of the development site to recharge area and reduced infiltration to the subsurface environment resulting from increased imperviousness of the surface area of the combined site.

The presented Construction Management Plan is deficient. No noise monitoring. Dust monitoring is referenced to geotech works. Demolition management deferred to engagement of contractors. There is no integration or clear alignment of the measures required to demonstrate compliance with ISEPP (or other regulatory criteria) with the content of the plan.

As a minimum council should

- Seek amendment to the SEE to address the requirements of the LEP
 - Seek clarification on the non compliances with the LEP with appropriate justification
 - Seek clarification from the proponent as to how this is meeting the needs of affordable housing for residents in the area, and evidence the demand for this product
 - Seek clarification on how this is not categorised as Hostel or Hotel, which is not permitted in this zoning
 - Seek how the proposal can ensure that the development will not be operated or used as a hostel or hotel, but as longer term affordable housing
- As submitted we formally object to this development.

Regards

Michael Yiend & Millicent Shilland

