

18<sup>th</sup> February 2014

The General Manager  
Warringah Council  
Civic Centre  
725 Pittwater Road  
DEE WHY NSW 2099

Dear Sir,

**Statement of Environmental Effects  
Modification of Development Consent 2007/0286  
Alterations to Existing Car Park – Delmar Private Hospital  
14 Patey Street, Dee Why**

**1.0 Introduction**

This submission has been prepared in support of an application to modify development consent 2007/0286, dated 12<sup>th</sup> December 2007, proposing alterations to the existing hospital car park to accommodate a total of 23 car parking spaces accessed from the Quirk Street frontage. We note that a Construction Certificate has been issued with works physically commenced on site.

Specifically the application proposes the reconfiguration of the approved car parking area to accommodate an ambulance bay and a pickup/drop-off area immediately adjacent to the front entrance of the hospital. The previously approved site coverage/ landscaped area outcomes are maintained on the site with an amended landscape plan prepared in support of the modified proposal detailing the trees to be removed to accommodate such works and appropriate compensatory plantings. The approved quantum of off street car parking is also maintained together with the car parking areas spatial relationship with surrounding residential properties.

In this regard Council can be satisfied that the proposed modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 96(1A) of the Environmental Planning and Assessment Act 1979.

The proposal succeeds when assessed against the heads of consideration pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979, as amended. It is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

## **2.0 Site description and location**

The site known as No. 14 Patey Street Dee Why is occupied by Delmar Private Hospital. Notwithstanding the Patey address for rating purposes the property has primary frontage to Quirk Street, the same frontage from which visitor access and parking is obtained.

The hospital is surrounded by dwelling house development reflective of the low density residential zone in which the site is located.

## **3.0 Detail of modifications sought**

The modifications are depicted on amended site plan DA02 dated Feb 2014 and amended landscape plan LP01C, dated 5<sup>th</sup> February 2014, prepared by Selena Hannan Landscape Design.

The application proposes the reconfiguration of the approved car parking area to accommodate an ambulance bay and a pickup/drop-off area immediately adjacent to the front entrance of the hospital. The previously approved site coverage/ landscaped area outcomes are maintained on the site with an amended landscape plan prepared in support of the modified proposal detailing the trees to be removed to accommodate such works and appropriate compensatory plantings. The approved quantum of off street car parking is also maintained together with the car parking areas spatial relationship with surrounding residential properties.

The application also proposes the deletion of conditions 2 and 8 which have been rendered unnecessary by the modifications sought and additional disabled car parking elsewhere on the site.

## **4.0 Statutory Planning Framework**

### **4.1 Section 96(1A) of the Environmental Planning and Assessment Act 1979**

Section 96(1A) of the Environmental Planning and Assessment Act 1979 ("EP&A Act") empowers Council to modify a development consent, if inter alia;

*“it is satisfied that the development to which the consent as modified relates is “substantially the same” development for which consent was originally granted and before that consent as originally granted was modified (if at all)”.*

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 essentially and materially the same development. The approved car parking area will continue to relate to its surrounds in the same manner.

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 proposal remains a development for alterations to an existing car parking area proposing a total of 23 car parking spaces and perimeter landscaping; and
- The modifications sought will not impose any amenity impacts on adjoining properties in terms of views, privacy, visual bulk or overshadowing with the streetscape presentation not significantly altered.

On the basis of the above analysis we regard the proposed application as being “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 96(1A) of the Act.

#### **4.2 Warringah Local Environmental Plan 2011**

The subject property is zoned R2 Low Density Residential pursuant to the provisions of the Warringah Local Environmental Plan 2011 (WLEP). Hospitals are permissible in the zone with consent. The stated zone objectives are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

This report demonstrates that the development is permissible and not antipathetic to the zone objectives in that it will facilitate the effective operation of the existing hospital which provides services to meet the day to day needs of residents.

The proposal complies with the 8.5 metre height of buildings standard. Accordingly there is no statutory impediment to the granting of consent.

#### **4.3 Warringah Development Control Plan**

The proposal has been assessed having regard to the relevant DCP provisions and to that extent Council can be satisfied of the following:

- The proposed modifications do not significantly alter the previously approved built form or its relationship to boundaries or adjoining properties;
- The accompanying Traffic and Parking Impact Statement, dated 5<sup>th</sup> February 2014, prepared by Ray Dowsett Traffic and Transport Planning Pty Limited concludes:
  - *The proposed entry/exit access driveway arrangements provide a greater separation thereby minimising conflict between entering and exiting vehicles and enhancing safety on the Quirk Street frontage of the site;*
  - *the proposal provides a convenient patient pickup and drop-off area adjacent to the hospital entrance;*
  - *The proposal provides parking for an ambulance/patient transport vehicle;*
  - *It is concluded that approval of the modifications proposed under the Section 96 application will not have any unacceptable traffic, parking for traffic related environmental implications and represents an improvement over the current approved plan.*
- The landscape quality of the development is maintained through the implementation of the modified landscape regime as proposed;
- The modifications sought will not compromise the previous residential amenity outcomes in terms of neighbouring properties;
- The tree loss proposed is adequately compensated for through the additional landscape plantings proposed; and
- The public interest is best served through the approval of the modifications sought under the circumstances.

## **5.0 Conclusion**

The application proposes the reconfiguration of the approved car parking area to accommodate an ambulance bay and a pickup/drop-off area immediately adjacent to the front entrance of the hospital. The modified car park layout will significantly enhance safety and efficient patient transportation without any adverse streetscape or residential amenity impacts.

In this regard Council can be satisfied that the proposed modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 96(1A) of the Environmental Planning and Assessment Act 1979.

The proposal succeeds when assessed against the heads of consideration pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979, as amended. It is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Greg Boston', written over a horizontal line.

**Greg Boston**  
B Urb & Reg Plan (UNE) MPIA CPP  
B Env Hlth (UWS)  
**Director**