

11 September 2020

The General Manager  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Dear Sir,

**Statement of Environmental Effects**  
**Section 4.55(2) Modification of Development Consent DA2017/0446**  
**Alterations and Additions to an Existing Hospital**  
**9 and 14 Patey Street and 64 - 66 Quirk Street, Dee Why**

**1.0 Introduction**

We have been engaged by Delmar Private Hospital Pty Limited to prepare an application to modify Development Consent DA2017/0446 pursuant to section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the Act) to facilitate the occupation of the recently completed alterations and additions. Specifically, the application seeks to regularise the use of a number of modifications that occurred during the construction process to achieve compliance with the Building Code of Australia, the Ministry of Health design and construction requirements and the provisions of the Private Health Facilities Act 2007, the Private Health Facilities Regulations 2017 and the Australasian Health Facility Guidelines.

These works included minor internal changes to room layouts and associated fenestration placement, the relocation of the hydrotherapy pool, an increased lift overrun height, and the reconfiguration of on-site parking resulting in a net increase in 2 carparking spaces. A plant room and associated acoustic screening was also constructed at roof level to house the necessary mechanical plant and associated equipment being the only feasible location on site capable of satisfying the necessary ventilation, air flow and acoustic requirements of the plant required to service a hospital of this size. Other essential mechanical exhaust structures are located on the roof and form part of this application. The application also proposes to modify the approved stormwater detention system involving the construction of a new below ground retention basis in the carpark to improve site drainage with such retention basin discharging to Quirk Street at the required flow rates.

With the exception of the “as built” plant room, acoustic screening, mechanical exhaust structures and lift overrun,, the previously approved building height, setbacks and envelope are unaltered with the approved streetscape, landscape and residential amenity outcomes afforded through approval of the original application in terms of privacy, solar access, acoustics and view sharing not compromised.

As such, Council can be satisfied that the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of s4.55(2) of the Act.

## 2.0 Proposed modifications

The proposed modifications are detailed in the summary table below and shown clouded on the referenced plans prepared by DWP as follows:

PLAN NO:	DESCRIPTION
A151 – Issue 1	These 21 <sup>st</sup> June shadow diagrams depict the inclusion of the required acoustic screening around for the “as built” roof top plant room. No additional shadows are cast.
A152 – Issue 1	These 22 <sup>nd</sup> December shadow diagrams depict the inclusion of the required acoustic screening around for the “as built” roof top plant room. No additional shadows are cast.
A202 – Issue 12	This “as built” basement plan depicts the inclusion of a sprinkler hydrant tank underneath the ramp to the basement. The plan also shows a hydrant sprinkler pump room as part of the enlarged switch room required as part of the new requirements for the sprinkler system of the building. Also depicted is a larger fire stair in the middle of the carpark satisfying the requirement for a larger landing for stretcher evacuation. This plan also depicts a larger OSD tank to satisfy the conditions of consent. Also depicted is the outline of the relocated hydrotherapy pool and changes to the parking layout.

A203 – Issue 17	This “as built” lower ground floor plan also depicts the inclusion of a sprinkler hydrant tank underneath the ramp to the basement. The floor plate was modified to facilitate the relocation of the approved hydrotherapy pool with its original location now occupied by 2 single bed wards. This plan also shows the larger fire stair and the 2 required exits being the new requirement of 1 stair and door from the basement and the other door from the building itself.
A204 – Issue 8	This “as built” ground floor plan depicts the internal layout changes required by the Ministry of Health (MOH) including the provision of an additional store room, the inclusion of a clean utility room behind the nurses station and the provision of a larger fire stair in the front of the building to comply with stretcher evacuation procedures. The modifications also included the provision of a Bariatric Ward with larger bathroom and the provision of an additional nurse station as required by the MOH.
A205 – Issue 8	This “as built” Level 1 plan depicts the inclusion of a ramped area from the recovery to the main body of the hospital so that the transition in floor levels could be achieved at compliant gradients. This plan also shows the addition of a staff desk at the northern end of the building as a requirement of MOH.
A206 – Issue 9	This “as built” roof plan details the location of the roof plant and required acoustic walls and the balance of the roof mounted mechanical exhaust equipment.
A401 – Issue 7	These “as built” elevations depict the roof top plant room and associated acoustic walls together with the required lift overruns. This plan also depicts the reduction of windows to the eastern elevation and the introduction of 2 fire doors in place of the 1 fire door as originally approved along the eastern facade of the building.

A402 – Issue 7	These “as built” elevations depict a reduction in the number of windows on the Quirk Street façade due to internal layout changes outlined above. This plan also depicts 2 fire doors from the fire staircase as a requirement of the most recent fire regulations.
A403 – Issue 6	This “as built” section depicts the relocation of the approved hydrotherapy pool to an inground position.

The application also proposes to modify the approved stormwater detention system involving the construction of a new below ground retention basis in the carpark to improve site drainage with such retention basin discharging to Quirk Street at the required flow rates as detailed in the stormwater drainage report, dated 12<sup>th</sup> August 2020, prepared by Bekker Engineering.

The application will also necessitate the modification of the following conditions:

**Condition 1**

This condition is to be modified to reflect the amended plans and stormwater report.

**Condition 45**

This condition is to be modified to replace the reference to disabled parking spaces 19 and 20 with disabled spaces 4 and 5.

**Condition 46**

This condition is to be modified to replace the reference to tandem spaces 19/20, 22/24, 23/25, 30/32 with 6/7 and 8/9.

**Condition 50**

This condition is to be modified to reference 86 spaces plus an ambulance bay and a loading bay being the correct total number of car spaces located across the consolidated hospital site.

### **3.0 Section 4.55 of the Environmental Planning and Assessment Act 1979**

Section 4.55(2) of the Act provides that:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
  - (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
  - (c) it has notified the application in accordance with—*
    - (i) the regulations, if the regulations so require, or*
    - (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*
  - (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (3) 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 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In answering the 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 building footprint, wall heights, setbacks and general envelope are maintained with the exception of the centrally located roof top plant room and associated acoustic screening. In this regard, we are satisfied that the additional building height associated with the roof top plant room and acoustic screening will not give rise to inappropriate or jarring streetscape impacts, given that these elements are centrally located on the roof, and will not give rise to additional shadowing, view loss, privacy or acoustic impacts. In forming this opinion, we rely on the accompanying shadow diagrams and condition 43 of the existing consent which requires any noise generating equipment or machinery externally located on the building be enclosed and certified by a suitably qualified Acoustic Engineer as to compliance with the applicable statutory noise criteria.

This condition also confirms that externally located and acoustically treated mechanical plant and equipment was anticipated by the original consent with the external works, the subject of this application, limited to the provision of roof mounted, enclosed and acoustically attenuated mechanical plant and equipment and minor fenestration and fire egress door modifications.

In this regard, we are satisfied that the approved development remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion to that originally approved.

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 application remains a proposal involving alterations and additions to the existing private hospital,
- The previously approved building heights are generally maintained with wall heights, setbacks and building footprint unaltered, and
- The modifications maintain the previously approved environmental outcomes in terms of residential amenity and streetscape presentation.

On the basis of the above analysis we regard the proposed application being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and appropriately dealt with by way of Section 4.55(2) of the Act.

#### **4.0 Warringah Local Environmental Plan 2011**

##### **Zoning and permissibility**

The subject property is zoned R2 Low Density Residential pursuant to the provisions of Warringah Local Environmental Plan 2011 (WLEP) with the modifications to the existing hospital remaining permissible with consent.

##### **Height of buildings**

Pursuant to clause 4.3 WLEP the height of any building on the land shall not exceed 8.5 metres above existing ground level as detailed on the heights of building map. The stated objectives of this clause are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The dictionary to the LEP defines building height to mean:

***building height (or height of building)*** means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

We confirm that the “as built” roof top plant room acoustic enclosure and lift overrun have a maximum RL of 77.480 being 11.98 metres above ground level existing representing a non-compliance of 3.48 metres or 40.9%.

Whilst clause 4.6 of WLEP provides a mechanism by which a development standard can be varied, such provisions do not apply to an application made pursuant to S4.55 of the Act. Instead, it is appropriate to assess such variation against the applicable objectives to determine whether strict compliance is unreasonable or unnecessary under the circumstances.

In this regard, the building height breaching elements forming part of this application respond to the building height objectives as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: Having inspected the site and viewed the “as built” plant room, acoustic screening, mechanical exhaust structures and lift overrun from available vantage points from within the public domain we are satisfied that these elements will not alter the approved developments level of compatibility with the height and scale of surrounding and nearby development.

In forming this opinion, we note that the “as built” plant room, acoustic screening, mechanical exhaust structures and lift overrun is not readily discernible from the public domain or from immediately adjoining properties given its location centrally on the roof form and the visual screening afforded by the edges of the roof upon which it is located. We also note that although surrounding development is characterised by 1 and 2 storey detached dwelling houses that the site is located within 150 metres of R3 Residential zone land on the northern side of Delmar Parade with such land occupied by 3, 4 and 5 storey residential flat buildings. St Lukes Grammar School is located 400 metres to the west of the site with such residential flat and institutional building forming components of the overall character of the immediate locality.

In this regard, we have formed the considered opinion that the height, bulk and scale of the roof top structures maintain the approved buildings level of compatibility in terms of height and scale relative to that of larger institutional and residential flat development located within proximity of the site.

In relation to the proposals compatibility with adjoining 2 and 3 storey building forms we note that the design, operational requirements and floor space needs of a contemporary private hospital are disparate to those of a dwelling house with both and uses permissible with consent in the zone. In this regard, condition 43 of the consent anticipated externally located and acoustically treated mechanical plant and equipment with the external works, the subject of this application, limited to the provision of roof mounted, enclosed and acoustically attenuated mechanical plant and equipment and minor fenestration and fire egress door modifications. In this regard, the mechanical plant room was also constructed at roof level to screen the necessary mechanical plant and associated equipment being the only feasible location on site capable of satisfying the necessary ventilation, air flow and acoustic requirements of the plant required to service a hospital of this size.

Compatibility and its assessment is dealt with in the planning principle established by the Land and Environment Court in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191. In this judgement Senior Commissioner Roseth indicated:



*There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though the difference in these attributes increases, harmony is harder to achieve.*

*Where compatibility between a building and its surroundings is desirable, its 2 major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* we are satisfied that the additional building height associated with the building height non-compliant plant room, acoustic screening, mechanical exhaust structures and lift overrun will not give rise to inappropriate or jarring streetscape impacts, given that these elements are centrally located on the roof, and will not give rise to additional shadowing, view loss, privacy or acoustic impacts. In forming this opinion, we rely on the accompanying shadow diagrams and condition 43 of the existing consent which requires any noise generating equipment or machinery externally located on the building be enclosed and certified by a suitably qualified Acoustic Engineer as to compliance with the applicable statutory noise criteria.

Further, we are of the opinion that most observers would not find the non-compliant building height portion of the development offensive, jarring or unsympathetic in a streetscape context. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

*(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment: This objective is clearly not defeated as discussed in response to objective (a) above.

*(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment: The non-compliant building height will not be readily discernible as viewed from the street and is not visible from any coastal or bush environments. This objective is not defeated.

*(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comment: The non-compliant building height elements will not be readily discernible as viewed from the street frontages. Having walked the surrounding streets and identified nearby and distant public places from which the roof top plant room and screening may be visible we are satisfied that the breaching height elements will not create an unacceptable or jarring visual impact as viewed from any public place. This objective is not defeated.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the works, the subject of this application and where located above the 8.5 metre height standard, offensive, jarring or unsympathetic in a streetscape context.

We have formed the considered opinion that the proposal will maintain appropriate residential amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. In this regard, the development satisfies the objectives of the height of buildings standard. Strict compliance is unnecessary under the circumstances.

## **5.0 Warringah Development Control Plan 2011**

Having assessed the modified development against the applicable provision of Warringah Development Control Plan 2011 we note the following:

- The siting and general scale of the development is maintained,
- The proposal maintains the previously approved wall heights and setbacks and an appropriate spatial relationship with adjoining development,
- The previously approved landscape and waste management outcomes are not compromised,
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development in relation to visual and aural privacy, solar access and view sharing,
- The modified stormwater regime provides for the appropriate disposal of stormwater,
- The proposal continues to provide appropriately for car parking with the previously approved access and egress arrangements maintained, and
- The modifications do not represent an intensification of use on this site.

## 6.0 Conclusion

This Statement of Environmental Effects has been prepared in support of an application seeking We have been engaged by Delmar Private Hospital Pty Limited to prepare an application to modify Development Consent DA2017/0446 pursuant to section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the Act) to facilitate the occupation of the recently completed alterations and additions.

Specifically, the application seeks to regularise the use of a number of modifications that occurred during the construction process to achieve compliance with the Building Code of Australia, the Ministry of Health design and construction requirements and the provisions of the Private Health Facilities Act 2007, the Private Health Facilities Regulations 2017 and the Australasian Health Facility Guidelines.

These works included minor internal changes to room layouts, the relocation of the hydrotherapy pool, the reconfiguration of on-site parking resulting in a net increase in 2 carparking spaces. A plant room was also constructed at roof level to screen the necessary mechanical plant and associated equipment being the only feasible location on site capable of satisfying the necessary ventilation, air flow and acoustic requirements of the plant required to service a hospital of this size. The application also proposes to modify the approved stormwater detention system involving the construction of a new below ground retention basin in the carpark to improve site drainage with such retention basin discharging to Quirk Street at the required flow rates.

With the exception of the “as built” plant room, acoustic screening, mechanical exhaust structures and lift overrun, the previously approved building height, setbacks and envelope are unaltered with the approved streetscape, landscape and residential amenity outcomes afforded through approval of the original application in terms of privacy, solar access, acoustics and view sharing not compromised. As such, Council can be satisfied that the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of s4.55(2) of the Act. Having given due consideration to the relevant considerations pursuant to s4.15 of the Act it is considered that the modifications, the subject of this document, succeeds on merit and is appropriate for the granting of consent.  
Yours faithfully

**Boston Blyth Fleming Pty Limited**



**Greg Boston**  
B Urb & Reg Plan (UNE) MPIA  
**Director**