

16 April 2019

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

Dear Sir,

Statement of Environmental Effects
Section 4.56 Modification of Development Consent N0530/15
7 Trentwood Park, Avalon Beach

1.0 Introduction

On 10th November 2017 the Land and Environment Court of NSW (the Court) granted consent to Development Application No. N0530/15 proposing the Torrens Title subdivision of 1 Lot into 3 Lots, the demolition of an existing detached garage and the construction of a new access road providing access to each of the new allotments.

This Statement of Environmental Effects (SoEE) has been prepared in support of an application seeking the modification of the above development consent pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979 (the Act). These provisions enable Council to modify a development consent granted by the Court.

The application seeks the creation of 1 metre wide service/ access handles from proposed Lots 2 and 3 to the Trentwood Park frontage to enable the efficient and separate servicing of each allotment without the need for easements. These handles are located generally within the approved driveway alignment where it traverses through proposed Lot 1 with the approved subdivision layout and indicative dwelling footprints unaltered as a consequence of the modifications sought.

Under such circumstances, Council can be satisfied that the modification involves 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 s4.56 of the Act.

2.0 Proposed modifications

The application seeks the creation of 1 metre wide service/ access handles from proposed Lots 2 and 3 to the Trentwood Park frontage to enable the efficient and separate servicing of each allotment without the need for easements.

The proposed modification to the approved subdivision plan is depicted on plan A01(H) prepared by Gartner Trovato Architects. The proposed lot sizes, landscaped areas and approved FSR have been adjusted having regard to the requirement to exclude the area of any access handle for the purpose of calculating subdivision lot size. The resultant lot sizes, landscaped areas and FSR calculations are as follows.

PROPOSED LOT 1 DETAILS	
SITE AREA	883.5m²
NET SITE AREA	865m²
LANDSCAPED AREA	581.8m² or 66%
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FLOOR AREA OF HOUSE	238m²
FSR	0.27:1

PROPOSED LOT 2 DETAILS	
SITE AREA:	2,952m²
NET SITE AREA:	2,775m²
LANDSCAPED AREA:	2048m² or 69%

PROPOSED LOT 3 DETAILS	
SITE AREA	1,582m²
NET SITE AREA	1,390m²
LANDSCAPED AREA	1,209m² or 76%
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FLOOR AREA OF HOUSE	290m²
FSR	0.18:1

The balance of the previously approved subdivision remains unchanged together with the requirement to obtain separate development consent for the construction of the future dwelling houses on proposed Lots 1 and 3.

Approval of the modified subdivision plan will necessitate the modification of condition 1 of the consent to reference the revised subdivision plan.

3.0 Section 4.56 of the Environmental Planning and Assessment Act 1979

Section 4.56(1) of the Act provides that:

- (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.*

Section 4.56(1A)) states that 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 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 previously approved environmental and dwelling density outcomes are maintained with no change to the approved indicative future dwelling house footprints. The modification to the approved subdivision plan will not give rise to any adverse environmental or built form consequences. In this regard, 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 the subdivision of 1 Lot into 3 Lots;
- The modification to the approved subdivision plan will not give rise to any adverse environmental or built form consequences with compliant lot sizes maintained; and
- The previously approved environmental and dwelling density outcomes are maintained with no change to the approved indicative future dwelling house footprints.

On the basis of the above analysis we regard the proposed application as being of minimal environmental impact and “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 4.56 of the Act.

4.0 Pittwater Local Environmental Plan 2014

4.1 Zone and Zone Objectives

The subject site is zoned E4 Environmental Living pursuant to the provisions of Pittwater Local Environmental Plan 2014 (PLEP). Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the E4 zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposal, as modified, remains permissible and consistent with the stated zone objectives as it maintains a low impact, low density residential outcome which will not give rise to any adverse environmental or heritage impacts with the approved development continuing to respond to site topography and sitting within a landscape setting.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

4.2 Subdivision Lot Size

Pursuant to clause 4.1(3) of PLEP 2014 the minimum subdivision lot size for development on the land is 700m². Clause 4.1(3A) prescribes that the area of any access handle is not to be included in calculating the lot size.

The application seeks the creation of 1 metre wide service/ access handles from proposed Lots 2 and 3 to the Trentwood Park frontage to enable the efficient and separate servicing of each allotment without the need for easements. In accordance with the clause 4.1(3A) provisions the area of these proposed service/ access handles has been excluded in the calculation of lot sizes as follows:

Proposed Lot Areas exclusive of the area of the service/ access handles	
Lot 1	865m ²
Lot 2	2775m ²
Lot 3	1390m ²

The resultant lot sizes remain well in excess of the minimum 700m² subdivision lot size standard.

In this regard, pursuant to clause 4.25(2) of the Act, if an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and*
- (b) must not refuse the application on the ground that the development does not comply with those standards, and*
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,*

and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

As the modified subdivision plan satisfies the minimum subdivision lot size standard there is no statutory impediment to the granting of consent.

4.3 Heritage Conservation

Pursuant to clause 5.10 of PLEP we confirm that the subject property is not heritage listed or located within a heritage conservation area however does immediately adjoin the C5 Ruskin Rowe Heritage Conservation Area. In this regard we rely on the Heritage Impact Statement prepared by John Oultram Heritage and Design, dated April 2016 (the Oultram report), in relation to the approved subdivision, which concluded:

Overall, we consider that there are no heritage considerations that would preclude the proposal proceeding and that the subdivision does not seek to overdevelop the site. The lots sizes remain generous and in line with the general pattern of the area and previous divisions.

The central lot provides a good curtilage to the existing house that will maintain its setting and pay due regard to its orientation, aspect and outdoor areas.

The proposal is unlikely to have any impact on the conservation area provided that tree removal is limited and the scale of the house lots is not large. In heritage terms, we would recommend that the proposals be approved.

The minor modification to the approved subdivision plan does not compromise the conclusions contained within the Oultram report in the assessment of the original scheme and to that extent Council can be satisfied that there is no heritage conservation impediment to the granting of consent.

4.4 Preservation of Trees and Vegetation

Pursuant to clause 5.9 of PLEP the proposed modification to the subdivision plan will not require the removal of any additional trees or significant vegetation with inter-allotment servicing impacts appropriately addressed in the assessment of the future development applications for the dwelling houses on proposed Lots 1 and 3.

4.5 Biodiversity

Pursuant to clause 7.6(2) of PLEP the land is located within Council's Biodiversity mapped area. The relevant provisions are as follows:

- (1) *The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:*
 - (a) *protecting native fauna and flora, and*
 - (b) *protecting the ecological processes necessary for their continued existence, and*
 - (c) *encouraging the conservation and recovery of native fauna and flora and their habitats.*

Pursuant to clause 7.6(3) (3) before determining a development application for development on land to which this clause applies, the consent authority must consider:

- (a) *whether the development is likely to have:*
 - (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

As previously indicated, the proposed modification to the subdivision plan will not require the removal of any additional trees or significant vegetation with inter-allotment servicing impacts appropriately addressed in the assessment of the future development applications for the dwelling houses on proposed Lots 1 and 3.

The proposed modification to the subdivision plan will not compromise the previously approved developments performance when assessed against the above considerations. These provisions are satisfied.

4.6 Essential Services

In accordance with clause 7.10 of PLEP the proposal provides for the creation of 1 metre wide service/ access handles from proposed Lots 2 and 3 to the Trentwood Park frontage to enable the efficient and separate servicing of each allotment without the need for easements.

5.0 Pittwater 21 Development Control Plan

The modified developments performance when assessed against the applicable Pittwater 21 Development Control Plan (P21DCP) controls is summarised as follows:

5.1 General Controls

Density Controls - Land Subdivision - Low Density Residential Areas

Pursuant to Part B2.2 of the Council P21 DCP as the land is identified as Area 1 on the Landscaped Area and the DCP controls are as follows:

- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot depth of 27 metres.*
- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 1 on the Landscaped Area Map shall have a minimum lot width at the building line of 16 metres.*
- *Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services.*
- *A person shall not subdivide land if the allotment(s) intended to be created have a slope in excess of 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s).*
- *The minimum area for building shall be 175m².*

The modified subdivision satisfies these controls with the previously approved indicative building footprints not altered as a consequence of the modifications sought. The proposed lots will remain safe from hazards and be adequately serviced. The minor modification to the approved subdivision plan will have no adverse impact on the natural environment.

The proposed modification to the subdivision plan will not compromise the previously approved developments performance when assessed against the above considerations. These provisions are satisfied.

Internal Driveways/Car Parking

There is no change to the previously approved internal driveway/ parking access arrangement.

Site Works Management

In accordance with Part B8 appropriate measures are to be undertaken to address the issues of construction and demolition impacts, erosion and sedimentation management, waste minimisation, site fencing and security, works in the public domain and traffic management where required.

Modest physical works are required to implement the proposed subdivision involving the creation of access and utility services to each resulting allotment. Demolition works will undertake appropriate disposal of waste materials.

5.2 Development Type Controls

Design Criteria for Land Subdivision

Section C4 of Pittwater 21 DCP contains provisions applicable to land subdivision and in this regard having regard to the provisions at C4.1 to C4.8 we advise as follows:

- The proposed modification to the subdivision plan will not compromise the previously approved developments performance when assessed against these considerations with the balance of the previously approved subdivision remains unchanged. Separate development consent is required for the construction of the future dwelling houses on proposed Lots 1 and 3.
- Adequate utility services are available to service the proposed allotments.
- Safe and convenient vehicular access is maintained to each allotment with no change to the previously approved driveway access arrangements.

6.0 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Act. Guidelines (*in italic*) to help identify the issues to be considered have been prepared by the Department of Urban Affairs and Planning. The relevant issues are:

6.1 The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.

The proposed modifications are permissible with the proposed lot sizes remaining compliant with the minimum lot size development standard.

Further, the proposed development will maintain the existing character of detached style housing within landscaped settings with the allotment sizes and dimensions enabling the design and construction of compliant dwelling houses on Lots 1 and 3 subject to separate development consent.

The development succeeds when assessed against the applicable statutory controls as detailed within this statement.

6.2 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economical impacts in the locality.

Context and Setting

i) *What is the relationship to the region and local context on terms of:*

- *the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

The proposed modified subdivision remains consistent with the established pattern, area and configuration of surrounding allotments. The design of future dwellings on Lots 1 and 3 will be the subject of separate development applications.

What are the potential impacts on adjacent properties in terms of:

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*

- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

Future dwelling houses on the allotments will continue to be designed and sited in accordance with the applicable built form controls and without unacceptable streetscape, residential amenity or tree loss impacts. In this regard, subsequent dwelling house design will be the subject of separate development applications lodged at a future time.

Access, transport and traffic

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial Place network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

Not applicable.

Public domain

The proposed modifications will have no adverse impact on the public domain.

Utilities

Existing utility services will adequately service the development.

Flora and fauna

As previously indicated, the proposed modification to the subdivision plan will not require the removal of any additional trees or significant vegetation with inter-allotment servicing impacts appropriately addressed in the assessment of the future development applications for the dwelling houses on proposed Lots 1 and 3.

Waste collection

No change to approved circumstance.

Natural hazards

The proposed lots will remain safe from hazards.

Economic impact in the locality

No change to approved circumstance.

Site design and internal design

Is the development design sensitive to environmental conditions and site attributes including:

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

No change to approved circumstance.

How would the development affect the health and safety of the occupants in terms of:

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

No change to approved circumstance.

Construction

What would be the impacts of construction activities in terms of:

- *the environmental planning issues listed above?*
- *site safety?*

Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise should any physical works be undertaken on site.

6.3 The suitability of the site for the development.

Does the proposal fit in the locality?

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

No change to approved circumstance.

Are the site attributes conducive to development?

There are no identified site constraints which would individually or collectively prevent the subdivision of the land as modified by this application.

6.4 Any submissions received in accordance with this Act or the regulations.

It is envisaged that Council will appropriately consider any submissions received.

6.5 The public interest.

The proposed modifications are permissible and consistent with the applicable controls and objectives as they are reasonably applied to the minor subdivision changes proposed.

The proposal presents an opportunity to provide additional housing in an established residential locality with high amenity for future occupants, as promoted by the zone objectives.

The development continues to be in the public interest.

7.0 Conclusion

This submission demonstrates that the modifications sought are permissible with consent and will not give rise to any adverse environmental or built form consequences.

The application seeks the creation of 1 metre wide service/ access handles from proposed Lots 2 and 3 to the Trentwood Park frontage to enable the efficient and separate servicing of each allotment without the need for easements. These handles are located generally within the approved driveway alignment where it traverses through proposed Lot 1 with the approved subdivision layout and indicative dwelling footprints unaltered as a consequence of the modifications sought.

Under such circumstances, Council can be satisfied that the modification involves 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 s4.56 of the Act.

Having given due consideration to the relevant considerations pursuant to s4.15(1) of the Act it has been demonstrated that the proposed modifications are appropriate for approval.

Yours faithfully

Boston Blyth Fleming Pty Limited

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

Greg Boston

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

Director