



northern
beaches
council

MEMORANDUM

DATE: 04/07/2024
TO: Northern Beaches Local Planning Panel (NBLPP)
FROM: Dean Pattalis
SUBJECT: Item 5.1 – DA2024/0091 - 45 Boyle Street BALGOWLAH

On 19 June 2024 the NBLPP resolved the following:

*“The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **defers** Application No. DA2024/0091 for Alterations and additions to a dwelling house including a swimming pool at Lot 1 DP 175524, 45 Boyle Street BALGOWLAH, to give the applicant the opportunity to submit to Council by 5 July 2024 the following:*

- a) Information regarding the status of the sewer tunnel at the rear of the property and its implications for the proposed development.*
- b) Information regarding the legal status and restrictions relating to the easement for water and sewerage (A566646) and its implications for the proposed development.*

If the requested information is not received by the date above, the Panel may proceed to determine the application on the material before it. The Chair will have the discretion to extend the above date if reasonable grounds are provided by the applicant.

Following receipt of this information, the Panel will determine the application electronically.”

The purpose of this memo is to provide further information to the panel in response to the deferral requirements:

- A) Information regarding the status of the sewer tunnel at the rear of the property and its implications for the proposed development.*

Comment:

The applicant has submitted a stamped plan by an accredited certifier to Sydney Water demonstrating that no assets are affected. Evidence of direct e-mail correspondence with Sydney Water has also been provided by the applicant demonstrating compliance. This matter is also ensured by the standard conditions of consent recommended within the deferral comments by NBLPP, which require a Section 73 Compliance Certificate, as well as a submission to the Sydney Water Tap in service.

B) Information regarding the legal status and restrictions relating to the easement for water and sewerage (A566646) and its implications for the proposed development.

Comment:

Council is not the beneficiary of the Easement. Nor is any other public authority, for example Sydney Water. The existence of the Easement does not prevent the granting of consent to the DA for the following reasons:

- In terms of stormwater management, the Easement does not require that stormwater flow from the Land, only by way of the portion of the Land referred to in the Easement. As such, any stormwater management solution proposed as part of the DA can be considered and approved in the ordinary course.
- If the DA proposed works that would interfere with or prevent the use of the Easement, then this would be required to be considered as part of the ordinary assessment of the DA, particularly if there was an objection on this basis by any person who had the benefit of the Easement. However, the Easement does not have any practical effect. There is no constructed drain running along the length of the Easement. Further, all the other properties which appear to have the benefit of the Easement have had various alterations and additions, have built over the Easement, and have different stormwater connections.

Advice was also sought from Council's Property Team and Land Dealings Officer who agreed with the above stating that the application should be treated the same as the other beneficiaries of the easement along Boyle Street who have built over it.

Therefore, the application in this context shall be subject to ordinary assessment. Council's Development Engineer is supportive of the application, subject to conditions, citing compliance with Council's Water Management for Development Policy.

Recommendation –

No changes required to the recommendation or conditions contained in the assessment report, apart from the conditions of consent already recommended by the panel in their deferral comments.