



27 February 2017

DHB:RB\08-164(X)

The General Manager
Northern Beaches Council
Civic Drive
725 Pittwater Road
Dee Why NSW 2099

Attention: The General Manager

Dear Sir/Madam,

Re Section 96(1A) modification to DA2008/0802 for the demolition of dwellings and construction of 34 new dwellings at Cutler Village, RSL LifeCare Anzac Village

1. INTRODUCTION

We write on behalf of RSL LifeCare Limited ("the Applicant") to request modifications of consent to DA2008/0802 ("the approved development") which was approved by Warringah Council ("Council") on 9 December 2009. The approved development comprised the demolition of 34 dwellings and construction of 34 replacement dwellings in the Cutler Village precinct of the RSL LifeCare Anzac Village at Veterans Parade, Narrabeen NSW 2101.

The Applicant seeks to modify the approved development in accordance with the provisions of Section 96(1A) of the Environmental Planning and Assessment Act 1979 ("EP&A Act").

Development has commenced in accordance with the consent to DA/2008/0802. RSL LifeCare has since carried out an ongoing design review of the approved plans concurrently with the existing operation of Anzac Village and has identified the requirement for minor improvements. This Section 96(1A) application seeks to amend the approved development in relation to the design and internal layout of Unit 4 of the Village Cutler. The modifications can be implemented by the replacement of drawings to the list of approved plans (endorsed with Council's stamp) pursuant to Condition No 1 of DA2008/0802.

The Applicant seeks to modify the approved development in accordance with the provisions of Section 96(1A) of the EP&A Act for the following reasons:-

- the requested modifications will be substantially the same as the development as originally approved pursuant to DA2008/0802; and
- the requested modifications are of minimal environmental impact and will have no significant adverse environmental impact.

The Applicant has instructed BBC Consulting Planners to prepare this submission and the accompanying documentation in support of the Section 96(1A) application.

The application is supported by the following documentation (under separate cover):-

- a Section 96 form (including owner's consent);
- replacement architectural plans prepared by Humel Architects;
- Waste Management Plan prepared by Humel Architects;
- Bushfire Assessment prepared by Building Code & Bushfire Hazard Solutions;
- BASIX Thermal Comfort Assessment prepared by Efficient Living Pty Ltd;
- BCA Assessment Report prepared by Blackett Maguire & Goldsmith Pty Ltd;
- Accessibility Statement prepared by Morris Goding Accessibility Consulting; and
- Landslip Assessment prepared by Crozier Geotechnical Consultants.

This application includes a USB containing electronic copies of the above documentation and a cheque to Northern Beaches Council for the relevant S96(1A) application fee.

2. LAND TO WHICH THE SECTION 96(1A) MODIFICATION RELATES

The land to which this application relates is known as 'Unit 4 Cutler' within the Cutler Village precinct of the RSL LifeCare Anzac Village at Veterans Parade, Narrabeen (herein referred to as "the site"). This is the same land to which the original development application relates.

3. CONSENT SOUGHT TO BE MODIFIED

The development consent sought to be modified by this S96(1A) application is that granted by Warringah Council (now Northern Beaches Council) to D2008/0802 on 9 December 2009. The DA approved the demolition of 34 dwellings and the construction of 34 replacement dwellings in the Cutler Village precinct of the RSL LifeCare Anzac Village.

DA2008/0802 has since been modified pursuant to a Section 96 application (Mod2015/0294) which was approved on 23 March 2016. This modification sought design amendments to 24 of the replacement dwellings in order to comply with accessibility codes, to improve internal design and configuration, and to meet current expectations of seniors housing amenity.

4. PROPOSED MODIFICATIONS

This Section 96(1A) application seeks modifications to the approved development in relation to Unit 4 Cutler. The modifications result in the reconfiguration of the internal layout and the overall building footprint. The revised footprint protects the existing shade house to the rear and provides an enclosed garage in lieu of the approved covered carport. The modifications result in a minor increase in building footprint width and a minor reduction in building footprint length. The amendments provide a natural landscape embankment within the external retaining wall which reduces excavation and interference with the natural ground line.

The modifications to the design and layout of Unit 4 Cutler are shown on the accompanying replacement architectural plans prepared by Humel Architects (under separate cover).

The proposed modifications can be best implemented via a change to Condition No 1 to DA2008/0802. It is suggested that Condition No 1 be amended to refer to the approved plans except where modified by the drawings and documentation accompanying this Section 96 application. Condition No 1 is currently drafted in this manner.

5. PRESCRIBED FORM

The prescribed requirements for a Section 96(1A) application are established in Clause 115(1) of the Environmental Planning and Assessment Regulation 2000. Northern Beaches Council has integrated these requirements into the application form for its own administrative purposes. A completed copy of this application form accompanies this submission.

6. CONSIDERATION OF RELEVANT PROVISIONS OF SECTION 96

Section 96(1A) of the Environmental Planning and Assessment Act 1979 states:-

“(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) 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*
- (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 any period prescribed by the regulations or provided by the development control plan, as the case may be.”*

In relation to **Section 96(1A)(a)**, the modifications have minimal environmental impact in the context of the approved 34 replacement dwellings at Cutler Village. The requirement for the modifications to Unit 4 has evolved during ongoing design review and primarily relate to design and internal layout. The modifications ensure that the unit complies with relevant accessibility codes and that the design meets current expectations for resident amenity.

In relation to **Section 96(1A)(b)**, Council can be satisfied that the development as modified will be the same as the approved development. The modifications will not result in any significant change in the overall design, appearance, scale or layout of Cutler Village. The development generally remains the same as approved being the demolition of 34 existing self-contained dwellings and the construction of 34 replacement dwellings.

In relation to **Section 96(1A)(c)**, Council may decide to notify this Section 96(1A) application.

Section 96(3) of the EP&A Act further states:-

“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 79C (1) as are of relevance to the development the subject of the application.”

The following section assesses the proposed modifications under the relevant heads of consideration of Section 79C of the Environmental Planning and Assessment Act 1979.

Section 79C(1)(a) – Statutory Planning Considerations

Section 79C(1)(a) of the EP&A Act requires the consent authority to take into consideration:-

- “(a) *the provisions of:*
- (i) any environmental planning instrument, and*
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) any development control plan, and*
 - (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
 - (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),*
- that apply to the land to which the development application relates”*

The requested modifications do not alter the findings of DA2008/0802 or Mod2015/0294 in relation to assessment against relevant environmental planning instruments, including State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, Warringah Local Environmental Plan 2011, and Warringah Development Control Plan 2011.

Section 79C(1)(b) – Environmental, Social and Economic Impacts

Section 79C(1)(b) of the EP&A Act requires the consent authority to consider:-

- “(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*

Impacts on the Built Environment

The modifications to Unit 4 are entirely compatible with the existing character of the Cutler Village and the emerging character of the area pursuant to the approved development. The modifications will have no adverse impact on the built environment of the Village.

When viewed in the context of the surrounding urban form (existing and approved) and in the context of the nature of the use and built form, it is considered that the development as modified remains substantially the same development as that originally approved.

The number of approved dwellings remains the same, being 34 self-contained dwellings.

Impacts on the Natural Environment

Protection of the natural environment will be achieved through effective managing during construction (particularly in regards to the prevention of erosion and sedimentation control).

Amenity Impacts

The modifications will not result in any additional adverse overshadowing impacts on adjoining or adjacent properties (existing or approved). There are no further amenity impacts in relation to loss of views, overlooking, obstruction of light or air, or obstruction of views.

In terms of access, this application is accompanied by an Accessibility Statement that has been prepared by Morris Goding Accessibility Consulting (provided under separate cover). The Statement concludes that the proposed modifications are able to achieve compliance with relevant provisions of the Seniors Housing SEPP and relevant Australian Standards.

Bushfire Impacts

A Bushfire Assessment has been prepared by Building Code & Bushfire Hazard Solutions (provided under separate cover). In relation to the modifications, the Assessment states:-

“As a suitably qualified bushfire practitioner I am satisfied that the proposed section 96 modifications do not alter the findings and / or recommendations made within the Bushfire Hazard Assessment Report prepared by Building Code & Bushfire Hazard Solutions P/L (dated 17th December 2015) which accompanied the previous section 96 application and was approved by the NSW Rural Fire Service.

We are therefore in support of the proposed section 96 modifications with no additional Bushfire Protection Measures other than those already detailed in the aforementioned Bushfire Hazard Assessment Report.”

In this regard the modifications do not result in any additional impacts on bushfire land.

Traffic Impacts

Traffic and parking impacts are negligible in that there are no changes to the number of parking spaces and no increase in the intensity of development or traffic generation.

Access to and within the enclosed garage is improved by the proposed modifications.

Social and Economic Impacts

The modifications would have a positive social impact in providing seniors housing that is more suited to contemporary expectations of resident amenity.

The modifications will have no adverse economic impacts.

Section 79C(1)(c) – The Suitability of the Site

Section 79C(1)(c) of the EP&A Act requires the consent authority to consider:-

“(c) the suitability of the site for the development”

The suitability of the Cutler Village precinct for the proposed development is not altered or diminished by the modifications sought in relation to the design and internal layout of Unit 4.

Section 79C(1)(d) – Submissions

Section 79C(1)(d) of the EP&A Act requires the consent authority to consider:-

“(d) any submissions made in accordance with this Act or the regulations”

Any relevant submissions made in relation to this Section 96(1A) application will need to be considered and assessed by Northern Beaches Council accordingly.

Section 79C(1)(e) – The Public Interest

Section 79C(1)(e) of the EP&A Act requires the consent authority to consider:-

“(e) *the public interest*”

The public interest is generally best served by the modifications that are reasonable and appropriate, that are consistent with the character of the area, and that do not create any significant adverse impacts on the environment or on neighbouring properties throughout the RSL Anzac Village. In this regard, the requested modifications are in the public interest.

7. SUMMARY

This Section 96(1A) application seeks approval for modifications to the list of the approved drawings pursuant to Condition No 1 ('Approved Plans and Supporting Documentation') to DA2008/0802. The modifications will facilitate changes to the design, internal layout, and floor area of Unit 4 at the Cutler Village precinct within the RSL LifeCare Anzac Village. The requirement for the changes has emerged during the course of an ongoing design review.

This application is regarded as being suitable for approval because:-

- the development as modified is substantially the same as the approved development (i.e. demolition of 34 dwellings and construction of 34 replacement dwellings);
- the proposal will have no adverse impacts on the amenity of adjoining dwellings within the Cutler Village precinct for the reason that it primarily relates to internal reconfiguration and improved design, accessibility, and functionality of one unit; and
- the modifications are of minor environmental impact and give rise to no significant additional impacts.

The modifications do not alter the findings made in relation to the assessment of the original application regarding the reasonableness and appropriateness of the development, being the demolition of 34 existing dwellings and the construction of 34 replacement dwellings, when considered in the light of matters listed in Section 79C(1) of the Environmental Planning and Assessment Act 1979. The proposed modifications have minimal environmental impact and the development as modified will be substantially the same as the approved development.

We trust that you find this application acceptable. However, if any further information or clarification is required please do not hesitate to contact the undersigned or Rob Battersby.

Yours faithfully

BBC Consulting Planners



Dan Brindle

Director

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