
Sent: 15/04/2020 9:12:36 AM

Subject: Item 3.2 NBLPP Meeting of 15th April 2020 - DA2019 - 638 Pittwater Road, Brookvale - Urgent

Attention: Daniel Milliken

Good morning Daniel,

We refer to today's NBLPP meeting and request that you table this email for the Panel's consideration. I will also be addressing the panel.

I can confirm that my client is comfortable with the recommendation and draft conditions with the exception of conditions 3 and 84 pertaining to the creation of a right of carriageway at ground and basement levels to provide legal access through the site to No. 640 Pittwater Road. These conditions are below:

3. TfNSW advises that current practice is to limit the number of vehicular conflict points along the arterial road network to maintain network efficiency and road safety. This current practice is reflected in Section 6.2.1 of TfNSW current publication of the Guide to Traffic Generating Developments, which states 'access across the boundary with a major road is to be avoided wherever possible'.

Pittwater Road is a major arterial road, which carries a high volume of traffic, where transport efficiency of through traffic is of great importance.

Further to the above, clause 101(2a) of State Environmental Planning Policy (Infrastructure) 2007, which reads as follows:

"The consent authority must not grant consent to development on land that has frontage to a classified road unless it is satisfied that:

(a) where practicable, vehicular access to the land is provided by a road other than the classified road".

Therefore the proposed 'future vehicle access to adjoining Lot 1 DP 900686' Right of Way as shown on page 4 of the Master Plan should be restricted until existing driveway to 406 Pittwater Road, Brookvale is made redundant.

84. Right of Access (through-site vehicle link)

A right of access (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure a through site vehicle access on all basement levels to No. 640 Pittwater Road.

The right of access must be of suitable dimensions (height and width) for vehicles to pass through in both directions (i.e. it must not be so narrow that it only allows one way access).

The terms of the right of access (available from Northern Beaches Council), are to be prepared by a registered surveyor at the applicants expense.

The right of access only needs to be activated should No. 640 Pittwater Road redevelop without consolidating with any other neighbouring sites.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the Strata Subdivision Certificate.

Reason: To allow the reasonable development of the neighbouring site.

Whilst we accept the proposition that vehicular access will not be supported from Pittwater Road to No. 640 Pittwater Road (the northern adjoining property), we do not accept the proposition that these conditions are reasonably imposed.

Reference is made within the Council assessment report to the planning principle established in the matter of *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 which deals with the amalgamation of sites and isolation of sites for redevelopment. The planning principles are as follows:

Planning Principles

17 The general questions to be answered when dealing with amalgamation of sites or when a site is to be

- Firstly, is amalgamation of the sites feasible?
- Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamated?

18 The principles to be applied in determining the answer to the first question are set out by Brown C in Commissioner said:

Firstly, where a property will be isolated by a proposed development, then negotiations between the owners of the properties should be conducted before a development application.

Secondly, and where no satisfactory result is achieved from the negotiations between the owners of the properties. These negotiations should include a reasonable offer, for the purposes of determining the development of the isolated lot, is to be based on at least one recent independent valuation of the lot, as incurred by the owner of the isolated property in the sale of the property. Thirdly, the level of negotiation and any offers made for the isolated lot should be reasonable or unreasonable, any relevant planning requirements under the Assessment Act 1979.

Having regard to these planning principles we note the following:

- No. 640 Pittwater Road will not be isolated by the proposed development given that it is able to be consolidated with the adjoining properties to its North all of which have access from Charlton Lane or Sydenham Road (see image below).
- Notwithstanding this, our client made a reasonable offer for purchase of this adjoining lot based on a recent independent valuation plus 10% to cover other reasonable expenses likely to be incurred by the owner of the adjoining property in the sale of the property (refer valuation within SoEE).
- The proposed design anticipates development on No. 640 Pittwater Road in terms of setbacks and the location of the central courtyard area and to that extent will not compromise the reasonable development potential of the adjoining land.



Under such circumstances, and to the extent that the planning principle is relevant given that No. 640 Pittwater Road is not isolated by the proposed development, we consider that reasonable attempts have been made to consolidate with this adjoining property in strict accordance with the planning principle.

Notwithstanding, and on a without prejudice basis, my client has agreed to accommodate future potential vehicle access through the subject site to adjoining Lot 1, DP 900686, No. 640 Pittwater Road, as shown on the approval plans, in the event that it is reasonably demonstrated that no alternate vehicular access is available through any other adjoining property. The terms of any future Right of Carriageway are to be negotiated between the property owners.

In this regard, we request the modification of the following conditions:

Condition 3 - We note that whilst these conditions were provided by the RMS that the proposal is not integrated development and accordingly there is no jurisdictional impediment to amending or deleting the conditions as considered appropriate.

We request that the 4th paragraph be amended to read:

The proposed future potential vehicle access through the subject site to adjoining Lot 1, DP 900686, No. 640 Pittwater Road, as shown on the approval plans, is to be made available for future vehicular access in the event that it is reasonably demonstrated that no alternate vehicular access is available through any other adjoining property. The terms of any future Right of Carriageway are to be negotiated between the property owners.

Condition 84 - We request that this condition be modified as follows:

The proposed future potential vehicle access through the subject site to adjoining Lot 1, DP 900686, No. 640 Pittwater Road, as shown on the approval plans, is to be made available for future vehicular access in the event that it is reasonably demonstrated that no alternate vehicular access is available through any other adjoining property. The terms of any future Right of Carriageway are to be negotiated between the property owners.

We consider that these modified conditions achieve the outcome sought by the RMS being the ability for No. 640 Pittwater Road to develop without the need for vehicular access on to Pittwater Road.

The creation of a right-of-way on the title of the subject site is a significant unreasonable and unnecessary burden in circumstances where No. 640 Pittwater Road is not isolated by the proposed development. In our opinion, the imposition of such condition fails the Newbery Test.


For your consideration.

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Director



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