

SECTION 4.55 MODIFICATION
REQUEST
TO NORTHERN BEACHES COUNCIL
TO DELETE CONDITIONS D26, D27
AND D39
OF DA 972/2003
FOR
SENIORS LIVING HOUSING AT
3A DYGAL STREET
MONA VALE

Prepared by LANCE DOYLE, TOWN PLANNER

B.AppSc (UWS), M.Plan (UTS), MPIA

lance@doyleconsulting.com.au

Introduction

It is my professional view that the proposed modifications should be assessed as “modifications involving minimal environmental impact” pursuant to Division 4.55 of the

Environmental Planning and Assessment Act, 1979, due to the fact that there are no unreasonable adverse amenity impacts on adjoining properties or the public domain.

Background

The parent Development Application approved on 22 November 2004 included a number of DA Conditions of Consent that are no longer required as the requisite works have been performed by Council or its contractors. The relevant conditions are as follows-

D26. The applicant is to reconstruct the kerb ramps in Keenan Street to be no steeper than 1:8 with landings 1330mm wide and maximum 1:33 cross fall. Ensure that the ramps have an included angle not less than 166 degrees between the ramp surface and the road surface.

D27. Gradients and cross falls on the path of travel from the site to the Waratah Street footpath are not to exceed the following:

Cross falls along the path of travel are not to exceed 1:33

Gradients between 1:14 and 1:12 are to be no longer than 15 metres in length.

Gradients between 1:12 and 1:10 are to be no longer than 5 metres in length.

Gradients between 1:10 and 1:8 are to be no longer than 1.5 metres in length.

D39. The applicant is to reconstruct those areas of the existing footpath in Waratah Street that exceed 1:10 gradient for more than 1.5 metres. These are located approximately between 158 metres from the site and 164 metres as well as between 248 metres and 253 metres from the site measured along the intended path of travel.

The Requested Modification

This modification application is submitted to Northern Beaches Council under the provisions of Division 4.55 – modification of consents– generally, ***Part 1(A) modifications involving minimal environmental impact.***

The modification requests removal of Conditions D 26, D27 and D39 of Development Consent 972/2003 as the requisite works have been performed by Council (or its contractors) and the above conditions are of no utility.

Division 4.55 of the Environmental Planning and Assessment Act 1979 No. 203.

The relevant provisions of Division 4.55 (1A) are as follows –

A consent authority must, 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,*

RESPONSE

The proposal is considered to be of minimal environmental impact due to the deletion of the conditions having no impact on the completed development on the subject site.

- b) It is satisfied that the development to which the consent has 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*

RESPONSE

The development as proposed to be modified will be the same development for which development consent was granted that is, the approved development will remain Housing for seniors or persons with a disability.

- 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 in the Council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

RESPONSE

The requested modification will be notified to likely affected parties by Northern Beaches Council.

- 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*

RESPONSE

Submissions made in response to the notification of the requested modification will be considered by the consent authority as part of the assessment process.

Reasons for the Proposed Modification

The reasons for the support of the proposed Division 4.55 Modification are due to the fact that Council has already constructed the required public infrastructure works as shown in the photographs below;



Figure 1: Waratah and Keenan Street



Figure 2: Waratah Street



Figure 3: Waratah Street

Division 4.15 Evaluation

4.15 Evaluation

7.6 Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(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

RESPONSE

The relevant provisions of the PLEP and relevant SEPP have been addressed in the body of this Statement.

(iii) any development control plan,

RESPONSE

The relevant provisions of the Pittwater 21 DCP have been addressed in the body of this Statement.

and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,

RESPONSE

No planning agreements apply to the proposal

and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

RESPONSE

The relevant regulations have been given due regard in the construction of this Statement.

and

(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,

RESPONSE

The body of this Statement describes the potential impacts upon the natural and built environments and the mechanisms to be incorporated to reduce or prevent these impacts upon the locality.

(c) the suitability of the site for the development,

RESPONSE

The subject site, by virtue of its existing layout, topography and locality is suitable for the modified proposal.

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

RESPONSE

Any submissions received in response to Councils notification of the proposal will be considered as part of Councils assessment of the proposal.

(e) the public interest.

RESPONSE

The proposal endorses the public interest by limiting the impact of the proposal to the existing cleared area of the subject site, with subsequent limited disturbance to the natural and built environment.

(2) Compliance with non-discretionary development standards—development other than complying development

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.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

(a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and

(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard. Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application. In this subsection, standards include performance criteria.

(4) Consent where an accreditation is in force

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.

(5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) Definitions

In this section: (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and (b) non-discretionary development standards means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

Environmental Planning Instruments

The proposal as approved and as modified remains a permissible development under the provisions of the Pittwater Local Environmental Plan 2014.

Development Control Plans

The proposal is bound by the provisions of Pittwater Development Control Plan 21. The proposed modification to the Development Consent does not encompass any further

variation to Council's Controls than those endorsed by the granting of current Development Consent No N0972/03.

Impact on the Natural Environment.

The proposed modification will not impact upon flora and fauna, soil or water quality, air quality or the conservation of natural resources

Impact on the Built Environment.

Scenic qualities – The proposed modification is consistent with the current and future character of the locality as expressed within the provisions of the Pittwater Local Environmental Plan 2014 and the Pittwater Development Control Plan 21.

Compatibility with adjacent land uses – The proposed modification will not materially alter the compatibility with the adjacent land uses.

Bulk and scale – The proposed public infrastructure works have been completed. The removal of the subject condition will not change the completed built form on the subject site.

Overshadowing – The proposed modification will not impact upon the solar access to nearby sites.

Views and vistas – There will be no impacts upon views and vistas across or around the subject site.

Site design – The retention of the infrastructure works are considered reasonable for the subject site.

Public domain – The proposed works in the public domain are considered unnecessary.

Amenity Impacts – I consider that there will be no unreasonable amenity impacts from the proposed modification.

Impact on the Social and Economic Environment.

The proposal is unlikely to result in any negative social or economic impacts.

Suitability of the Site.

The subject site, by virtue of its existing development, zoning, topography and locality is suitable for the proposal.

Conclusion

For the reasons set out in the preceding sections of this Request, the deletion of the conditions of consent is, by any measure, of minimal environmental impact and will enable the conditions to be removed as they now serve no purpose as the requested works are now completed.

Prepared by Lance Doyle, Town Planner

B.AppSc (UWS), M.Plan (UTS), MPIA

lance@doyleconsulting.com.au

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