

17 May 2024

Chief Executive Officer  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

Attention: Ms Stephanie Gelder

Dear Ms Gelder

**Re: DIVISION 8.2 REVIEW OF DETERMINATION (DA2023/1015): 6 Nield Avenue, Balgowlah**

**Preliminaries**

This letter is written on behalf of Paul O'Connor and Toby Cogley the landowners of 6 Nield Avenue, Balgowlah (the **site**). It relates to Development Application (**DA**) 2023/1015 which was refused development consent on 19 January 2024 on the following grounds:

1. *Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013, and Clause 3.7 Stormwater Management of the Manly Development Control Plan 2013.*
  - i. *The Stormwater Plans that detail discharge of stormwater from part of the site via a charged system to the front kerb (DR-000 to DR-004, Revision 2, dated 1 December 2023, prepared by Stellen Civil and Structural Engineering and DR-005 to DR-006, Revision 3, dated 2 January 2024, prepared by Stellen Civil and Structural Engineering) are inconsistent with Section 5.5 Stormwater Drainage from Low Level Properties of Northern Beaches Council's Water Management for Development Policy.*
  - ii. *In accordance with Section 5.5 Stormwater Drainage from Low Level Properties of Northern Beaches Council's Water Management for Development Policy, an on-site detention system and level spreader is considered the appropriate method to manage stormwater on this site.*
  - iii. *The proposed on-site detention tank is incorrectly located at the high point of the site, whereas the on-site detention system is required to be located at the low point of the site to provide for an emergency overflow path in case of blockage.*
  - iv. *The proposed pipe connections from site to boundary are not at the minimum angle of at least 45 degrees. The proposed long pipe with acute angles indicates that drainage to the street is not feasible.*
  - v. *Council is not satisfied that the proposed stormwater design will avoid adverse impacts of stormwater runoff on adjoining properties, and will appropriately protect downstream properties from stormwater inundation.*

In support of the Division 8.2 Review of Determination of DA2023/1015, which proposed the following development on the site:

*Demolition of existing structures and construction of a dual occupancy (attached) and subdivision of the existing allotment into two (2) Torrens title allotment.*

The following information is submitted (under separate cover) to the Northern Beaches Council (**Council**), which addresses the reasons for refusal in the Notice of Determination.

- Stormwater Statement, by Stellen Consulting Pty Ltd (07.05.2024)
- Stormwater Drawings, by Stellen Consulting Pty Ltd:
  - DR-000 Legend (1.12.2023)
  - DR-001 Pipe Layouts (07.05.2024)
  - DR-002 Roof Layout (27.02.2024)
  - DR-003 Details Sheet 1 (01.12.2023)
  - DR-004 Details Sheet 2 (03.05.2024)
  - DR-005 Site Areas (03.05.2024).

As a result of the revised stormwater design, with an OSD tank under the deck and the OSD wall within the rear gardens, the following Architectural Plans in the set were updated to reflect the revised stormwater design:

- Architectural Drawings, by Sean Smyth Design Pty Ltd (15.05.2024)
  - DA011 Rev M – Floor Area/Open Space & Landscape Calculations
  - DA012 Rev M – Site Plan/Roof Plan
  - DA013 Rev M – Pervious & Impervious Calculations
  - DA015 Rev M –Landscape Plan
  - DA020 Rev M – Basement & Lower Ground Floor + Upper Ground & Lower Ground + Lower & First Floor Plan
  - DA021 Rev M – First Floor Plan (Upper).

Note: There is no change to the Architectural Drawings submitted except to reflect the revised stormwater design.

### **Reasons for refusal**

The revised stormwater plans and supporting information prepared by Stellen Consulting Pty Ltd and Sean Smyth Architects addresses the reasons for refusal (listed at Item 1(i)(ii)(iii)(iv)(v)) within the Notice of Determination of DA/2023/1015.

### **Division 8.2 Review of Determination**

Consistent with the terms set out in Division 8.2 of the EP&A Act:

- The determination of an application for development consent by Council under Part 4 is subject to a review under this division (s 8.2(1)(a)). DA/2023/1015 satisfies the requirements, noting that it is not a complying development certificate, designated development or Crown development.
- As the applicant for the development consent we request on behalf of the landowner the consent authority (Council) review the determination under s. 8.3(a). Noting that a determination cannot be reviewed under this Division after the period within which any appeal may be made (6 months).
- In accordance with s. 8.3(3), the amended information does not materially alter the original proposal. The amended information seeks to resolve the stormwater management issues on site as identified by Council in its determination. As a result of the amended stormwater design, all of the existing characteristics of the original determination including the proposed land use, subdivision, bulk and scale of the building, landscaping, materials and finishes, pedestrian and vehicle access points and car parking are retained.
- In light of the above, the proposal results in a development that is substantially the same as the development for which consent was originally sought (in form and content).

- S. 8.3(4) states the review of determination is to be made by another delegate of Council who is not subordinate to the delegate who made the original decision.

**Conclusion**

The application satisfies the requirements listed at Division 8.2 of the EP&A Act and addresses the reasons for refusal within DA2023/1015. The proposed development with amended stormwater scheme is therefore considered acceptable.

Please do not hesitate to contact the undersigned (0419 249 467) should you require any additional information.

Yours faithfully



Kyeema Doyle  
BSc MURP  
PIA Registered Planner