

28th August 2019

The General Manager
Northern Beaches Council
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

**STATEMENT OF ENVIRONMENTAL EFFECTS
MODIFICATION OF DEVELOPMENT CONSENT DA2014/0574
INCREASE IN CHILDCARE PLACES FROM 80 TO 84
NO. 38 ORLANDO ROAD, CROMER**

1.0 INTRODUCTION

On 27th October 2014 Council granted development consent DA2014/0574 for the construction of a childcare centre and caretaker residence on the subject site. Condition 42 of the consent limits the maximum enrolment for the childcare centre operations to 80 children.

We have been engaged to prepare an application to modify the latter development consent pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act). The application proposes an increase in childcare places from 80 to 84 with the increase in numbers accommodated without change to the established built form or carparking arrangement. In this regard, the existing turning bay at the eastern end of the carparking area is to be used as an additional childcare parking space bring the total number of off-street parking spaces to 22. The increase in childcare places will allow the childcare operator to meet a clear demand for childcare places in this location.

To that extent Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 4.55(1A) of the Act.

2.0 SITE LOCATION AND DESCRIPTION

The existing childcare centre occupies Lot 2, DP 1220196, No 38 Orlando Road, Cromer. The allotment is an irregular 'L' shape having a primary frontage of 15.24 metres to Orlando Road, a rear boundary of 59.96 metres, side boundaries of 20.525 metres and 40.54 metres and a total site area of 1922sqm. The site is occupied by a 2 storey building with under-croft car parking used for a childcare centre with managers residence above.



Source: (SIX Maps)

Figure 1 – Aerial location/ context photograph

The property to the south and west of the site is occupied by Roche Products Pty Limited a company specialising in the manufacture and sale of pharmaceuticals and consumer products. The property to the east is occupied by a 2 storey industrial/ warehouse building incorporating ancillary offices and having frontage and vehicular access from Orlando Road. Development located on the northern side of Orlando Road comprises a mix of industrial and warehouse uses.



Figure 2 – View looking towards subject site from Orlando Road

3.0 MODIFICATIONS SOUGHT

The application proposes an increase in childcare places from 80 to 84 with the increase in numbers accommodated without change to the established built form or car parking arrangement. In this regard, the existing turning bay at the eastern end of the carparking area is to be used as an additional childcare carparking space bring the total number of off-street parking spaces to 22. The application will require the modification of the following conditions:

38. Allocation of Spaces

Car parking spaces provided shall be provided, made accessible and maintained at all times suitable for parking purposes. The spaces shall be allocated as follows:

- 1 - Residential (Cartaker's residence)*
- 19 20 - Childcare centre / staff and service vehicles*
- 1 - Space for persons with a disability*

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking shall be line marked and numbered or signposted to indicate the occupancy to which it is allocated.

Carparking spaces are not to be used for the storage of miscellaneous items or enclosed/caged-in to isolate them from the other parking spaces. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure that adequate parking facilities to service the development are provided on site.

42. Maximum Enrolment

The maximum enrolment for the childcare centre operations is not to exceed ~~80~~ 84 children.

Reason: Public health, safety and sustainability

The existing indoor and outdoor play space areas and toilet facilities will appropriately cater for the increased childcare places proposed.

4.0 STATUTORY PLANNING FRAMEWORK

4.1 Section 4.55(1A) of the Environmental Planning and Assessment Act 1979

Section 4.55(1A) of the Act provides that:

- (2) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development 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*

.....

We have formed the considered opinion that as the increase in childcare place numbers can be accommodated without change to the established built form or carparking arrangement that the proposal is of minimal environmental impact.

In answering the above threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls.

In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 per Bignold J.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in *Vacik Pty Ltd v Penrith City Council* (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

“Substantially when used in the Section means essentially or materially or having the same essence.”

What the abovementioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the approved development for the use of the building as a childcare centre remains, in its modified state, the use of the building for a childcare centre with an additional 4 child care places representing a relatively minor increase in intensity of use.

The built form elements continue to relate to their surrounds in the same fashion, namely the modifications sought maintain the established built form and landscaped circumstances.

The Court in the authority of *Stavrides v Canada Bay City Council* [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was “substantially the same” as that originally. A number of those general principles are relevant to the subject application, namely:

- The proposed use does not change;
- The external building appearance, envelope and volume is identical to the original approval;
- The increase in childcare place numbers will not impose any additional amenity impacts on adjoining properties in terms of views, privacy, visual bulk or overshadowing.

On the basis of the above analysis we regard the proposed application to be of minimal environmental impact and is “essentially or materially” the same as the approved development such that the application is appropriately dealt with by way of Section 4.55(1A) of the Act.

4.2 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

Clause 23 Centre-based childcare facility—matters for consideration by consent authorities

Before determining a development application for development for the purpose of a centre-based childcare facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.

We confirm that the proposed increase in childcare places complies with the applicable provisions of the Child Care Planning Guideline noting that the childcare centre use is established on this site.

4.3 Warringah Local Environmental Plan 2011

4.3.1 Zone and zone objectives

The subject property is zoned IN1 General Industrial pursuant to the provisions of Warringah Local Environmental Plan 2011 (WLEP 2011).

Centre-based child care facilities are permissible in the zone with consent. Accordingly, there is no statutory impediment to the granting of consent.

4.3.2 Height of Buildings

Pursuant to clause 4.3 WLEP the height of any building on the land shall not exceed 11 metres above existing ground level.

We confirm that there are no physical works proposed as component of the application with the established building heights maintained.

4.3.3 Heritage Conservation – Heritage Impact Statement

Pursuant to clause 5.10 the subject site contains a number of heritage items listed in Schedule 5 of WLEP 2011 namely:

Item I52 - Roche Building, 100 South Creek Road

Description:

Industrial/office building of off-form concrete with glass curtain walling. Assymetrical arrangement with hexagonal tower of off-form concrete with squatter glass-walled tower to east. Strong horizontal element provided by 3 storey office wing to west.

Statement of Significance:

A substantial & excellent example of an industrial complex in the late 20th Century international style. Displays high degree of integrity. One of first industrial complexes set in substantial landscaped grounds. Socially significant due to landmark nature.

Item I53 - Givaudan-Roure Office, 96 South Creek Road

Description:

Single storey weatherboard cottage now converted to office use. Brick foundations. Terracotta tiled hipped roof with small gables on top. Exposed rafter ends. Square projecting bay windows to front with multi-paned casement windows. Retains residential character, set in gardens. Repair works to roof have occurred.

Statement of Significance:

A representative example of an inter-war dwelling. Displays good integrity with much original fabric. Historically it is a rare survivor of development of this area prior to release & development for industrial purposes.

Item I38 - Trees, Campbell Avenue

Description:

The eastern side of the Roche property contains numerous mature cultural plantings and remnant specimens. Amongst these are Figs, Pines, Camphor Laurels, Turpentine, Agonis species, Melaleuca species, Willows, Brush Box, Coral Trees, Elms, Planes, Jacarandas, Magnolias, Tree Ferns and Eucalypts. The northern section of the eastern boundary also contains several old Pine Trees dating probably from the turn of the 19th-20th century. These were not associated with the trees on former Lot 629, but on Lot 639 to the north of it.

Statement of Significance:

The collection of trees in the south-east sector of the Roche Products site, facing south Creek Rd and Campbell Ave at Dee Why have a moderate degree of heritage significance at the Local level.

They have existed on this site since the turn of the 19th -20th century and may have been associated with the nurseryman Charles Hirsch who owned the land immediately to the north during that period. They are esteemed by local residents and confer on the area a distinctive sense of place. While the trees are not individually rare, the presence in Dee Why of such a mixed collection of trees in good condition is.

The proposed increase in childcare places will not give rise to any heritage conservation impacts.

4.4 Warringah Development Control Plan

4.4.1 Parking facilities

Pursuant to Appendix 1 of WDCP, the minimum parking requirement for childcare centres is:

1 car parking space per 4 children, having regard to the maximum number of children authorised to be cared for at any particular time.

The application seeks to use the existing turning bay at the eastern end of the carparking area as an additional childcare parking space bring the total number of off-street childcare parking spaces to 21. Such quantum satisfies the off-street parking requirement for 84 childcare places in strict accordance with the control. We note that there is no requirement for an on-site turning bay.

4.5 Section 4.15(1) the Environmental Planning and Assessment Act 1979 (as amended)

The proposal has been assessed having regard to the matters for consideration pursuant to section 4.15(1) of the Act and to that extent Council can be satisfied of the following:

- The proposed modifications are permissible with consent with such works appropriately dealt with by way of Section 4.55(1A) of the Act.
- The modification sought will not alter the three-dimensional form and external appearance of the existing development and as such will not give rise to any adverse environmental consequences in relation to views, solar access, privacy or drainage;
- The proposal will not give rise to any adverse environmental consequences however will meet a clear demand for additional childcare places in this locality.
- The public interest is best served through the approval of the modification sought under the circumstances.

5.0 CONCLUSION

The application proposes an increase in childcare places from 46 to 58 with the increase in numbers accommodated by the purchase of additional land as detailed on the accompanying plan and owners consent documentation.

The increase in childcare places from 80 to 84 will allow the childcare operator to meet a clear demand for childcare places in this location with no physical changes required to the existing building to accommodate such increase.

To that extent Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved.

Accordingly, the application is appropriately dealt with by way of Section 4.55(1A) of the Act.

Having given due consideration to the relevant considerations pursuant to section 4.15(1) of the Act it is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

A handwritten signature in black ink, appearing to read 'Greg Boston', is positioned above the printed name.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

Director