

10th November 2013

The General Manager
Warringah Council
Civic Centre
725 Pittwater Road
DEE WHY NSW 2099

Dear Sir,

**Statement of Environmental Effects
Modification of Development Consent 2010/1136
Subdivision of Land and Construction of 3 Dwellings
No. 136 Anzac Avenue, Collaroy Plateau**

1.0 Introduction

This submission has been prepared in support of an application to modify development consent 2010/1136 dated 30th October 2010 proposing the subdivision of land and construction of 3 dwellings. This document represents a Statement of Environmental Effects prepared pursuant to the provisions of the Environmental Planning and Assessment Act, 1979 (the Act).

We have been engaged to prepare an application to modify the development consent pursuant to Section 96(2) of the Act. Specifically the application seeks to significantly reduce the level of fill required to achieve the approved ground levels at the rear of Lots 2 and 3 by 1000 mm and a corresponding reduction in the finished floor and ridge levels of the dwellings on proposed Lots 2 and 3 by 500mm and 1000mm respectively. The application also proposes changes to the detailing and location of the west facing first floor windows on proposed Lot 3. Revised BASIX Certificates for the dwellings on proposed Lots 2 and 3 accompany this application.

We note that necessary easements have now been obtained to drain stormwater through No. 10A Plateau Road and 31A Parkes Road as reflected in the revised stormwater and OSD plans prepared by Glen Haig + Partners Engineers copies of which accompany this application. The enhanced privacy, ground level and landscape/ fencing relationship sought by the modifications form part of the negotiated drainage outcome agreed by the owners of No. 10A Plateau Road and 31A Parkes Road.

In this regard Council can be satisfied that the proposed 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 96(2) of the Environmental Planning and Assessment Act 1979.

The proposal succeeds when assessed against the heads of consideration pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979, as amended. It is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

2.0 Site Description and Location

2.1 The Site

The subject site is legal described as Lot 1, DP 235748, No. 136 Anzac Avenue, Collaroy Plateau. The site is irregular in shape having frontage to Anzac Avenue of 24.38 metres, a total depth of 60.96 metres and a site area of 1616 square metres. The rear portion of the site "dog legs" behind the adjoining property to the west known as No. 140 Anzac Avenue.

The site falls approximately 4.5 metres across its surface in a south westerly direction and contains a number of trees the most significant of which are located at the frontage of the property. The property is currently vacant.

2.2 The Locality

Development in this locality does not exhibit a consistency in scale, materials or detailing, and each varies in terms of height, design and front setback. The property to the east is occupied by a single storey rendered brick and fibro cottage with tile and metal roof and an attached carport located adjacent to the Anzac Avenue frontage. The property to the west is occupied by a brick cottage with tile and metal roof and detached brick and fibro garage.

Further to the east are properties having frontage to Plateau Road and occupied by 2 storey brick and tile dwellings. The property to the south is a battleaxe site accessed from Plateau Road and occupied by a 2 storey brick house with tile roof, half tennis court and inground swimming pool located immediately adjacent to the rear boundary of the subject allotment. The property to the south west of the site is accessed via Parkes Road and occupied by a 2 storey dwelling with tennis court and in ground swimming pool located immediately adjacent to the common boundary.

The properties located on the northern side of Anzac Avenue are occupied by 1 and 2 storey detached dwelling in informal landscaped settings. Public transport is readily accessible within short walk distance of the site.

3.0 Detail of modifications sought

The modifications are depicted on amended plans WD-A-050(F), 051(F), 103(F), 105(J), WD-L-001(C), WD0L-002(C) and SK-A-105 P4 prepared by Quattro Architecture.

Specifically the application seeks to significantly reduce the level of fill required to achieve the approved ground levels at the rear of Lots 2 and 3 by 1000 mm and a corresponding reduction in the finished floor and ridge levels of the dwellings on proposed Lots 2 and 3 by 500mm and 1000mm respectively. Revised BASIX Certificates for the dwellings on proposed Lots 2 and 3 accompany this application.

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The application also proposes the deletion of conditions 8, 9 and 11 which have been rendered unnecessary by the modifications sought.

4.0 Statutory Planning Framework

4.1 Section 96(2) of the Environmental Planning and Assessment Act 1979

Section 96(2) of the Environmental Planning and Assessment Act 1979 ("EP&A Act") empowers Council to modify a development consent, if inter alia;

"it is satisfied that the development to which the consent as modified relates is "substantially the same" development for which consent was originally granted and before that consent as originally granted was modified (if at all)".

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 remains in its modified state essentially and materially the same development. The subdivision and buildings continue to relate to their surrounds in a similar albeit improved and more sympathetic fashion.

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 proposal remains a development for a 3 lot subdivision and the construction of a dwelling house on each allotment;
- The external building appearance, envelope and volume are near identical although some approved levels have been lowered to enhance privacy; and
- The modifications sought will not impose any amenity impacts on adjoining properties in terms of views, privacy, visual bulk or overshadowing. In fact potential impacts have been significantly reduced.

On the basis of the above analysis we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 96(2) of the Act.

4.2 Warringah Local Environmental Plan 2000

4.2.1 Locality and Desired Future Character

When originally approved the subject property is located within Locality E1 – Dee Why North pursuant to the provisions of the Warringah Local Environmental Plan 2000 (WLEP). The desired future character of the Locality, as detailed in the WLEP, is as follows:

The Dee Why North locality will remain characterised by detached style housing in landscaped settings interspersed by a range of complementary and compatible uses.

Future development will relate to the established pattern and predominant scale of detached houses in the locality and the streets will be characterised by landscaped front gardens and buildings which create a sense of address to those streets.

The spread of indigenous tree canopy will be enhanced where possible and natural landscape features, such as rock outcrops and remnant bushland will be preserved and development on prominent hillsides or hill tops must be designed to integrate with the landscape and topography and minimise visual impact when viewed from afar.

Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.

Dwelling houses are a Category One land use whilst Subdivision is a Category Two land use. Category One uses are uses which are assumed to be generally consistent with the Desired Future Character of the locality.

The modifications sought do not compromise the approved developments consistency with the DFC.

4.3.1 Housing Density

The locality statement indicates that the maximum housing density shall be 1 dwelling per 600 square metres of site area.

The housing density is not altered as a consequence of the modifications sought.

4.3.2 Building Height

The building height control states that buildings are neither to exceed 2 storeys nor 8.5 metres. The maximum height is the distance measured vertically between the topmost point of the building and natural ground level below. Further, buildings are not to exceed 7.2 metres from natural ground level to the underside of the ceiling on the uppermost floor of the building.

The modifications provide for a reduction in the finished height of the dwelling houses on proposed lots 1 and 3 with such height sitting well below the maximum height requirements pursuant to the LEP 2000.

4.3.3 Front Building Setback

The previously approved front building setbacks are not altered as consequence of the modifications sought.

4.3.4 Rear Building Setback

The previously approved rear building setbacks are not altered as consequence of the modifications sought.

4.3.5 Side Boundary Envelope and Side Setbacks

Pursuant to this control development must be sited within an envelope determined by projecting planes at 45 degrees from a height of 4 metres above natural ground level at the side boundary. A minimum 900mm setback is to be maintained to side boundaries.

The proposed dwelling houses remain fully compliant with the side boundary envelope and side setback provisions.

4.3.6 Landscaped Open Space

The landscaped open space control states that the minimum area of landscaped open space shall be 40 percent of the site area.

The modifications maintain the approved landscaped open space for each of the proposed dwelling houses.

4.4.7 General Principles of Development Control

Having regard to the applicable General Principles of Development Control contained within WLEP we provide the following opinion:

- The proposed modifications do not significantly alter the previously approved building form or its relationship to boundaries or adjoining properties;
- The landscape quality of the development is maintained through the implementation of the modified landscape plans as proposed;
- The modifications sought will not compromise the previous residential amenity outcomes in terms of overshadowing, privacy or views.

4.3 Warringah Local Environmental Plan 2011

4.3.1 Zone and Zone Objectives

The subject property is zoned R2 Low Density Residential pursuant to the provisions of the Warringah Local Environmental Plan 2011 (WLEP). Dwelling houses are permissible in the zone with consent. The stated zone objectives are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

This report demonstrates that the development is permissible and not antipathetic to the zone objectives.

4.3.2 Height of Buildings

Pursuant to clause 4.3 WLEP the height of any building on the land shall not exceed 8.5 metres above existing ground level. The stated objectives of this clause are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Accordingly, Council can be satisfied that the development complies with the 8.5 metre control and its underlying objectives.

4.4 Section 79C the Environmental Planning and Assessment Act 1979 (as amended)

The proposal has been assessed having regard to the matters for consideration pursuant to S79C of the Act and to that extent Council can be satisfied of the following:

- The proposed modifications do not significantly alter the previously approved building form or its relationship to boundaries or adjoining properties;
- The landscape quality of the development is maintained through the implementation of the modified landscape plans as proposed;
- The modifications sought will not compromise the previous residential amenity outcomes in terms of overshadowing, privacy or views.
- The public interest is best served through the approval of the modifications sought under the circumstances.

5.0 Conclusion

The application seeks to significantly reduce the level of fill required to achieve the approved ground levels at the rear of Lots 2 and 3 by 1000 mm and a corresponding reduction in the finished floor and ridge levels of the dwellings on proposed Lots 2 and 3 by 500mm and 1000mm respectively. The application also proposes changes to the detailing and location of the west facing first floor windows on proposed Lot 3.

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Yours sincerely



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