

17th December 2019

The General Manager
Northern Beaches Council
PO Box 1336
Dee Why NSW 2099

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA2019/0108
Proposed self-storage premises
9 – 13 Cook Street, Forestville

1.0 Introduction

On 30th September 2019 Development Determination Panel granted consent to development application DA2019/0108 proposing demolition works and the construction of a self-storage facility on the northern portion of the allotment.

This document forms a component of an application seeking the modification of the consent pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act).

The modifications seek changes to the internal layout, roof design and external facade detailing of the development as approved to enhance buildability and to meet the specific design and operational requirements of Wilson Storage. We note that the roof design and detailing has been amended to satisfy condition 40 of the consent which prescribes a maximum roof height of RL 132.150 with the landscape plan also updated to reflect the modifications sought. The front façade alignment to Cook Street has also been simplified with provision made in the north western corner of the building to accommodate the existing sewer main in this location.

We note that the three-dimensional form and presentation of the building is not materially altered with the approved spatial separation maintained to surrounding properties. This report demonstrates that the streetscape, landscaping, car parking, stormwater disposal and residential amenity outcomes afforded through approval of the original scheme are not compromised with a slight reduction in overshadowing resulting from the modified roof design and geometry.

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 Environmental Planning and Assessment Act 1979 (the Act).

2.0 Detail of Modifications Sought

The proposed modifications are depicted on the following plans prepared by MCHP Architects:

ARCHITECTURAL DRAWING SCHEDULE		
SHEET No.	SHEET NAME	CURRENT REVISION
DA000.2	COVER PAGE	B
DA002.2	PERSPECTIVES	B
DA051.2	GROUND FLOOR AREA PLAN	B
DA052.2	LEVEL 1 AREA PLAN	B
DA053.2	LEVEL 2 AREA PLAN	B
DA200.2	SITE & ROOF PLAN	B
DA201.2	GROUND FLOOR PLAN	B
DA202.2	LEVEL 01 FLOOR PLAN	B
DA203.2	LEVEL 02 FLOOR PLAN	B
DA301.2	BUILDING ELEVATIONS	B
DA305.2	BUILDING SECTIONS	B
DA401.2	SHADOW DIAGRAMS	B
SK005.2	BUILDING HEIGHT STUDY	B

The modifications seek changes to the internal layout, roof design and external facade detailing of the development as approved to enhance buildability and to meet the specific design and operational requirements of Wilson Storage.

We note that the roof design and detailing has been amended to satisfy condition 40 of the consent which prescribes a maximum roof height of RL 132.150 with the landscape plan also updated to reflect the modifications sought. Overall floor space is slightly reduced.

The front façade alignment to Cook Street has also been simplified with provision made in the north western corner of the building to accommodate the existing sewer main in this location.

The application is accompanied by an updated landscape plan prepared by Site Design + Studios to reflect the adjusted building footprint. No changes are proposed to the approved car parking and stormwater drainage regimes.

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

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

- (1) A consent authority may, 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*
 - (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*
 - (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, and*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (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, as the case may be.*
- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In answering the threshold question as to whether the proposed modifications are of minimal environmental impact we note that the internal reconfiguration works will not be discernible as viewed from outside the site with the general form and massing of the approved building as viewed from Cook Street maintained. We note that the roof design and detailing has been amended to satisfy condition 40 of the consent which prescribes a maximum roof height of RL 132.150 with a slight reduction in overshadowing resulting from the modified roof design and geometry.

We note that the three-dimensional form and presentation of the building is not materially altered with the approved spatial separation and wall heights maintained to surrounding properties. This report demonstrates that the streetscape, landscaping, car parking, stormwater disposal and residential amenity outcomes afforded through approval of the original scheme are not compromised

To that extent, Council can be satisfied that the modifications involve 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 remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion as originally approved in terms of wall heights, side boundary setbacks and landscape outcomes. The modifications will not significantly alter the 3-dimensional built form or residential amenity outcomes achieved through approval of the original scheme.

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 as perceived from adjoining properties and the public domain are not significantly altered; and
- The streetscape, landscaping, car parking, stormwater disposal and residential amenity outcomes afforded through approval of the original scheme are not compromised.

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 4.55(1A) of the Act.

4.0 Matters for Consideration Pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979(as amended):

The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.

Height of buildings

Pursuant to clause 4.3(2) of Warringah Local Environmental Plan 2011 (WLEP 2011) the site has a maximum building height limit of 9 metres as depicted in Figure 1 below.

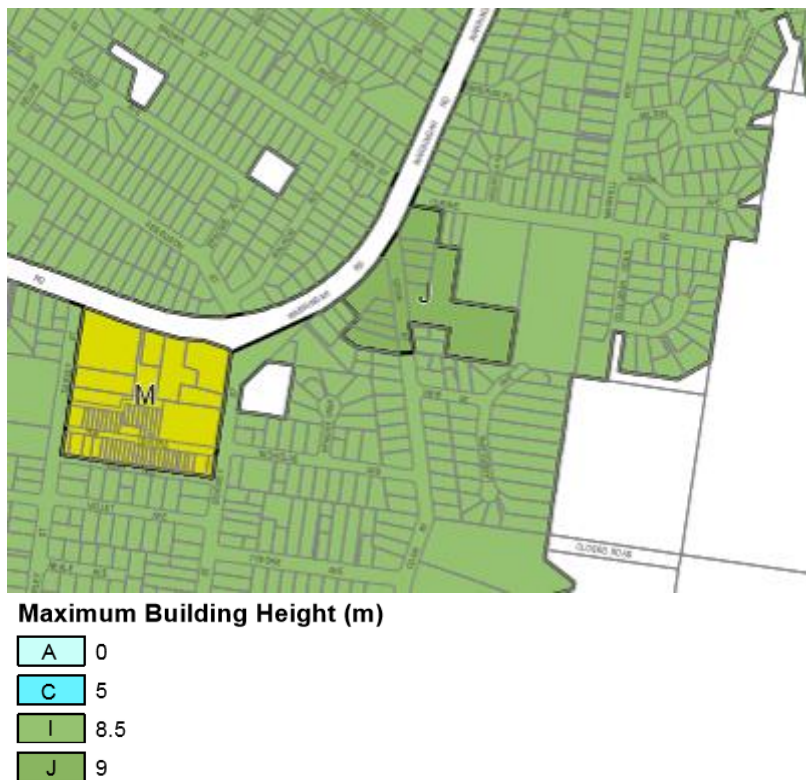


Figure 1 - Height of buildings Map extract WLEP 2011

The objectives of this standard 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.*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

We note that the roof design and detailing has been amended to satisfy condition 40 of the consent which prescribes a maximum roof height of RL 132.150. The modifications do not compromise the approved building height outcomes.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the modified proposal by virtue of its height and form offensive, jarring or unsympathetic in a streetscape context.

The performance of the development when assessed against the balance of the WLEP and WDCP provisions is not compromised.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Context and Setting

i) *What is the relationship to the region and local context on terms of:*

- *the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

Having undertaken a detailed site and context analysis and identified available view lines over the site we have formed the considered opinion that the modified development will not give rise to any visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties

ii) *What are the potential impacts on adjacent properties in terms of:*

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

As above.

Access, transport and traffic

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*

- *traffic management schemes?*
- *vehicular parking spaces?*

The previously approved off-street parking circumstance is maintained.

Public domain

There are no public domain changes.

Economic impact in the locality

The proposed development will provide short term employment opportunities during demolition and construction.

Site design and internal design

i) *Is the development design sensitive to environmental conditions and site attributes including:*

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

The modifications will not significantly alter the 3-dimensional built form, residential amenity or streetscape outcomes achieved through approval of the original scheme.

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The proposed works will be able comply with the provisions of the Building Code of Australia without difficulty. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health, safety and accessibility.

Construction

i) *What would be the impacts of construction activities in terms of:*

- *the environmental planning issues listed above?*

- *site safety?*

Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

The suitability of the site for the development.

Does the proposal fit in the locality?

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The site is suitable for the development.

Are the site attributes conducive to development?

The site has no special physical or engineering constraints is suitable for the proposed development.

Any submissions received in accordance with this Act or the regulations.

It is envisaged that any submissions made in relation to the proposed development will be appropriately assessed by Council.

The public interest.

The modifications will not significantly alter the 3-dimensional built form, residential amenity or streetscape outcomes achieved through approval of the original scheme.

Approval would not be antipathetic to the public interest.

5.0 Conclusion

The modifications seek changes to the internal layout, roof design and external facade detailing of the development as approved to enhance buildability and to meet the specific design and operational requirements of Wilson Storage. We note that the roof design and detailing has been amended to satisfy condition 40 of the consent which prescribes a maximum roof height of RL 132.150 with the landscape plan also updated to reflect the modifications sought. The front façade alignment to Cook Street has also been simplified with provision made in the north western corner of the building to accommodate the existing sewer main in this location.

We note that the three-dimensional form and presentation of the building is not materially altered with the approved spatial separation maintained to surrounding properties. This report demonstrates that the streetscape, landscaping, car parking, stormwater disposal and residential amenity outcomes afforded through approval of the original scheme are not compromised with a slight reduction in overshadowing resulting from the modified roof design and geometry.

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 Environmental Planning and Assessment Act 1979 (the Act).

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Act and is appropriate for the granting of consent

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD

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

Director