



**SECTION 96(1A) APPLICATION AT
NOS. 24-26 BEACH STREET, CURL CURL**

NOVEMBER 2012

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Note: This document is preliminary unless approved by a Project Manager/Director of City Plan Strategy & Development				

1. EXECUTIVE SUMMARY

This Statement has been prepared for South Pacific Private by City Plan Strategy and Development Pty Ltd to accompany a Section 96(1A) modification application to Warringah Council.

The proposed Section 96(1A) modification relates to the existing private Hospital located at No. 24 Beach Street and the existing residential development at No. 26 Beach Street, Curl Curl. Development Consent 2012/0658 was approved on 6 September 2012 in relation to the sites for *“demolition works, alterations and additions to an existing hospital, and use of premises as an administrative building to the existing hospital.”*

This modification application seeks to delete Condition 8 *Consolidation of Lots* of Development Consent DA2012/0658. Details of the proposed modification are contained within **Section 3** of this Statement.

This Statement has been prepared pursuant to Section 78A of the Environmental Planning and Assessment Act, 1979 and Clause 50 of the Environmental Planning and Assessment Regulation, 2000.

The purpose of this document is to: -

- Describe the existing and approved improvements on the site;
- Detail the proposed modification;
- Review the applicable planning regime relating to the proposal; assess the degree of compliance; and
- Assess the degree of compliance with the provisions of the planning framework; and
- Examine the environmental effects of the development when measured against the evaluation criteria prescribed under Section 96(1A) of the Environmental Planning and Assessment Act, 1979.

In respect of the assessment of the proposed Section 96(1A) modification application it is considered to be substantially the same development as the development for which consent was originally granted. Moreover, the proposed modification does not result in any environmental effect and is worthy of Council consent.

2.2 Existing development

Existing development on the site comprises South Pacific Private (SPP) which is an operation Hospital occupying No. 24 Beach Street, and a single storey detached dwelling situated at No. 26 Beach Street, Curl Curl. An aerial view of the site is provided in **Figure 2** below.

The site has been operating as an approved Hospital since 1965. SPP has been in operation since 1993 as an approved Private Hospital offering inpatient and day patient services which specialises mainly in the treatment of mood and addictive disorders. The Private Hospital has full accreditation with ACHS and has contracts in place with most major health funds.

The site has vehicular driveway access off Beach Street, providing a total of 10 car parking places to the rear of the building. The hospital is three storeys in height with provision of common areas and landscaped areas on the ground floor and first floor.

The most recent approval was provided by Development Consent DA2012/0658 approved on 6 September 2012 for demolition works, alterations and additions to the existing hospital at No. 24 Beach Street. In accordance with DA2012/0658 the site at No. 26 Beach Street is approved for occupation as an ancillary administrative purpose to the Hospital.



Figure 2: Aerial photo of the site (source: Google Maps)

3. DESCRIPTION OF THE PROPOSED MODIFICATION

3.1 General Description

This application for modification to the Council Consent DA2012/0658, issued on 6 September 2012, is lodged under the provisions of Section 96(1A) of the Environmental Planning and Assessment Act 1979 (the Act). The proposed modification seeks to **delete** Condition 8 *Consolidation of Lots* which states the following: -

8. Consolidation of Lots

Lot 81, DP 583700 and Lot 1, DP 937236 must be consolidated as one (1) allotment and registered on a survey plan (prepared and signed by a Registered Surveyor) with the NSW Land & Property Information Service (NSW Department of Lands).

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 the offices operate ancillary to the primary hospital use. (DACPLF02)

3.2 Discussion of Proposed Amendment

Development Consent DA2012/0658 is granted over the site area of Nos. 24 - 26 Beach Street, Curl Curl and provides approval for the use of No. 26 Beach Street for administrative purposes which operate solely as an ancillary function of the existing Hospital at No. 24 Beach Street. It is noted that the occupation of the premises as a Hospital is permissible in the R2 Low Density Residential zoning. Development Consent DA2012/0658 provides approval for the use of both of the subject sites as a Hospital on two (2) separate lots. We note that the separate land titles of these lots have no impact on the operation and function of these properties as a Hospital.

Development Consent DA2012/0658 included the imposition of Condition 8 *Consolidation of Lots* which requires Nos. 24 and 26 to be amalgamated as a single allotment. This application seeks the deletion of Condition 8 *Consolidation of Lots* to simplify and streamline the process in relation to satisfying the conditions of consent in accordance with DA2012/0658. We consider it appropriate to delete this condition, as it has no bearing on the physical occupation of the premises as a Hospital, as discussed above.

We note that in accordance with Clause 80(A) of the *Environmental Planning and Assessment Act, 1979* 'Imposition of conditions,' condition of consent can only be imposed if it relates to any

matter referred to in section 79C(1) of relevance to the development the subject of the consent. In our opinion the occupation of Nos. 24 and 26 Beach Street as a Hospital, the subject of Development Consent DA2012/0658, is not dependant on the land titles of these sites being either separate or amalgamated. As such, the consolidation of the sites is out of the scope of matters referred to in section 79C(1) and the imposition of Condition 8 is inappropriate and requested to be deleted.

No. 26 Beach Street has approval for the use of the premises only in association with the existing Hospital at No. 24 Beach Street, being offices for the Hospital administrative staff and offices for the counsellors. No. 26 Beach Street cannot and has no approval or use as offices in any capacity other than in association with the existing Hospital at No. 24 Beach Street. No part of No. 24 and No. 26 Beach Street will be occupied for any purpose unrelated to the operation of the Hospital; it simply has no approval for such. Considering this, the consolidation of the lots does not, in fact, have any influence or bearing on the approved occupation of the premises as a Hospital.

Furthermore, as Council has been made aware in the pre-lodgement meeting held on 23 October 2012, the long-term strategy for the site is to redevelop the existing Hospital at No. 24 Beach Street, as well as the adjoining properties at Nos. 26 and 28 Beach Street, in the interest of improving the services and operation of the Hospital. This strategy seeks to undertake a site-wide integrated and holistic approach to provide a high quality development which reorganises and improves the function and appearance of the overall built form. The future proposal includes the demolition of the existing dwelling at No. 26 Beach Street to provide vehicular access and on-site parking, and the adaptive reuse of No. 28 Beach Street to improve the overall services which the Hospital can offer its patients. Appropriate plans and supporting documentation is currently being prepared to achieve this outcome, and a Development Application will be lodged in the near future for this purpose in relation to Nos. 24, 26 and 28 Beach Street for the redevelopment of the Hospital.

A key consideration of this long-term strategy for the Hospital is the inclusion of the existing development at No. 28 Beach Street. Given this, we consider it appropriate to defer any appropriate consolidation of the sites as required by Development Consent D2012/0658 to a time post redevelopment of Nos. 24-28 Beach Street by deleting Condition 8, and addressing the consolidation of the sites, if appropriate, in the future Development Application. This strategy ensures that the process of occupying the sites, and consolidating them in the future, if necessary, is undertaken in a streamlined approach, and does not disadvantage the integrity of the sites in their current form as single lots.

It will be apparent now to Council that DA2012/0658 is an interior phase of a larger and more comprehensive strategy as discussed at the pre-lodgement meeting held on 23 October 2012. Should the interim development the subject of the pre-lodgement meeting not commence or be approved then our client needs the option to revert No. 26 to a residential purpose. If Nos. 24 and 26 Beach Street are consolidated, this will be made more difficult, time consuming and costly.

To this end, it is requested that Condition 8 is deleted, given the sites will be occupied for purposes directly relating to the operation of the Hospital only, and the process of consolidating the sites into a single allotment is distinct from the operation of the Hospital and is considered unnecessary.

4. STATUTORY CONSIDERATION

The original Consent granted on 6 September 2012 under DA2012/0658 granted approval for:

“Demolition works, alterations and additions to an existing hospital, and use of premises as an administrative building to the existing hospital.”

The proposed Section 96(1A) application does not alter the approved use of the development.

4.1 Section 96(1A) Of the Environmental Planning and Assessment Act, 1979

This modification is being proposed under Section 96(1A). Section 96(1A) of the Environmental Planning and Assessment Act 1979, enables a consent authority to modify a development consent upon application being sought by the applicant or any other person entitled to the act on the consent, provided that the consent authority as part of the assessment process take into consideration the following matters:

(a) it is satisfied that the proposed modification is of minimal environmental impact,

This application seeks to delete Condition 8 *Consolidation of Lots* to remove the requirement for the subject lots to be consolidated. The proposed modification does not alter the approved occupation of the sites as a Hospital, or alter the operation or appearance of the development.

The modification will have no significant impact upon the properties in the near vicinity of the site, resulting in no change to the location, form, scale and function of the development, as approved. The proposal does not result in any environmental impact.

(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),

Under DA2012/0658 Council granted consent for the continued occupation of No. 24 Beach Street as a *Hospital*, and the occupation of the existing development at No. 26 Beach Street as a *Hospital*, being ancillary to No. 24 Beach Street. The proposed S96(1A) application does not seek to modify the approved occupation of the developments.

In our view, “*substantially the same developments*” means “*essentially or materially or having the same essence*” as defined by Pearlman C.J. in **Schroders Australian Property Management Ltd v Shoalhaven City Council and Anor (1999) NSWLEC 251**. Accordingly, it is the substance of the proposal relative to the substance of the development as originally approved. The development, as modified would *essentially and materially have the same essence*.

In addition, it is noted that during the proceedings of **Tipalea Watson Pty Ltd v Ku-ring-gai Council (NSWLEC 253) 2003** *substantially the same development* had the meaning of “*essential characteristics*” of the approved development. In addition, during the Court proceedings of **Moto Projects (No. 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298**, Bignold, J held that: -

“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (current) approved development”.

Accordingly, when any proposed amendments to an approved development results in the following: -

- Significant change to the nature or intensity of the use;
- Significant change to the relationship to adjoining properties;
- Adverse impact on neighbours from the changes (overshadowing; visual and acoustic privacy; traffic generation, etc);
- Significant change to streetscape; and
- Change to the scale or character of the development

it can no longer be considered as substantially the same development.

The proposed modifications are not considered to change the essential features of the approved development. The use and function remains unchanged as does the site configuration. As such, the proposal does not result in any environmental impact. The proposal maintains the approved use of the sites, being the ongoing occupation of No. 24 Beach Street as a Hospital, and No. 26 Beach Street to be used for administration purposes ancillary to the Hospital, such as administrative support services and offices for

the Hospital counselors. The proposal is substantially the same development. Its land title has no bearing on its approved use.

Quantitative impact

The proposed amendments **do not** alter the nature or intensity of the Hospital use. The proposed modifications seek to retain the current land titles arrangement, and delete the requirement to formally amalgamate the sites as a single allotment. This arrangement does not have any impact on the occupation and operation of the Hospital facility. Accordingly, it is considered that the modification results in substantially the same development as approved under DA2012/0568 on 6 September 2012.

(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 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**

Given the proposed modification does not result in any environmental impacts, and only seeks to simplify and streamline the process of satisfying the conditions of consent, it is not considered necessary to notify the surrounding properties, in accordance with Councils notification policy.

(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.

Consideration of any submissions made will be made during the assessment process.

(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 79C (1) as are of relevance to the development the subject of the application.

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

The modification will have no significant impact upon the properties in the near vicinity of the site, and the quantum and quality is substantially the same as was originally approved under DA2012/0658 by Council on 6 September 2012.

b. The suitability of the site for the development.

The suitability of the site has been comprehensively addressed and it is considered by the virtue of granting of development consent. The proposed development is substantially the same development because there is no change to the location, form, scale and function, the suitability of the site remains unchanged.

c. The public interest.

Pursuant to case law of **Ex Gratia P/L v Dungog Council (NSWLEC 148)**, the question that needs to be answered is *“Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development?”*

The proposal seeks to delete Condition 8 *Consolidation of Lots* to simplify and streamline the process of satisfying the conditions of consent in accordance with DA2012/0658. The works do not impact on the occupation or operation of the sites as a Hospital and has no impact on the amenity of the neighbouring properties.

There are no unreasonable impacts that will result from the proposed development, therefore, the benefits outweigh any disadvantage and as such the proposed development will have an overall public benefit.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

The modification of a development consent pre-supposes that a development application has been made and a consent granted in response to it. A consent authority may impose conditions on the approval of the modification application. Although the modification of consent is not taken to the granting of consent, any conditions imposed as part of the modification becomes part of the consent because the consent is taken to be the **consent as modified**.

4.2 Relevant Planning Instruments and Development Controls

In considering the proposed modifications to Development Consent DA2012/0658 against the relevant matters it is noted: -

- There would be no conflict with any aims, objectives or provisions of the environmental planning instruments relevant to Development Application DA2012/0658, being the Warringah Local Environmental Plan 2011;
- There are no other draft environmental planning instruments relevant to Development Application DA2012/0658;
- There would be no conflict with any aims, objectives or provisions of the relevant development control plans, being the Warringah Development Control Plan;
- There would be no conflict with any provision within the Environmental Planning and Assessment Regulation; and
- There would be no adverse impacts for the natural or built environment.

4.3 Development on Sloping Land

The subject site is located within **Area B** in accordance with the Landslip Risk Map of the WLEP 2011. **Clause 6.4** of the WLEP needs to be considered, and states as follows: -

"Clause 6.4 – Development on Sloping Land

- 1) The objectives of this clause are as follows:
 - a) to avoid significant adverse impacts on development and on properties in the vicinity of development sites resulting from landslides originating either on or near sloping land,
 - b) to ensure the impacts of storm water runoff from development on or near sloping land are minimised so as to not adversely affect the stability of the subject and surrounding land,
 - c) to ensure subsurface flows are not adversely affected by development so as to not impact on the stability of existing or adjoining land.
- 2) This clause applies to land shown as Area A, Area B, Area C, Area D and Area E on the Landslip Risk Map.
- 3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and
 - b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and
 - c) the development will not impact on or affect the existing subsurface flow conditions."

The proposal is consistent with the objectives of this clause for the following reasons: -

- The proposal does not involve any site, building or structural works, and no risk of the subject sites being impacted upon by landslides.
- The proposed development does not impact upon the existing storm water runoff from the development and will not affect the stability of the subject or surrounding land.
- The proposal does not include any excavation or landfill and will not affect the existing subsurface flows.

The proposal is consistent with the requirements of Point 3 of this Clause for the following reasons: -

- The proposal is not for any site, building or structural works. The proposal does not involve any excavation or landfill and does not risk the occurrence of a landslide.
- The proposed development will not adversely impact upon the existing stormwater discharge from the site and is for minor alterations only which will not result in any detrimental impacts on the existing stormwater discharge from the site.
- The proposal does not involve excavation of landfill and will not impact on or affect the existing subsurface flow conditions.

5. CONCLUSION

The proposal is for a Section 96(1A) application to modify the Council Consent issued on 6 September 2012, under DA2012/0658, to delete Condition 8 *Consolidation of Lots*.

In summary, the proposed Section 96(1A) application: -

- is considered *substantially the same development* as the development for which consent was originally granted;
- is appropriate when assessed by reference to relevant matters for consideration under Section 79(C)(1); and
- does not modify the built form and presentation of the approved Hospital development;
- enables the occupation of the sites to be undertaken in a streamlined approach, and does not disadvantage the integrity of the sites in their current form as single lots; and
- will result in no environmental impacts on the properties in the vicinity of the site, resulting in no change to the location, form, scale and function, as originally approved.

The proposal as amended under this S96(1A) modification application warrants approval by Council.