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planning consultants

**STATEMENT OF ENVIRONMENTAL EFFECTS
SECTION 4.55(1A) APPLICATION TO MODIFY
DEVELOPMENT CONSENT NO. DA2022/0751
53 Arthur Street, Forestville**

1.0 Introduction

DFP has been commissioned by Mr David Mackay to prepare an application under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify development consent No. DA2022/0751 (as modified) for the construction of a dwelling house.

DFP lodged a Section 4.55(1A) Modification Application to modify DA2022/0751 in December 2023. The application sought to delete Condition 18 – Vehicular Crossing Reinstatement however this application was withdrawn as recommended by Northern Beaches Council. Council's engineers stated in the letter to David Mackay on 31 January 2024 the following:

"The removal of Condition 18 of Consent DA2022/0751 is not supported as this crossing is made redundant by the construction of the new dwelling. As there will be no approved parking space for this driveway crossing once the dwelling is constructed it is necessary for the crossing to be reinstated to curb and footpath.

If the applicant is proposing to create a circular driveway with additional parking then this would need to be included in a future development application for consideration."

DFP discussed the options available with Council's Town Planner, Mr Dean Pattalis that the best course of action was to withdraw the first Section 4.55(1A) Modification Application and submit the plans for the circular driveway and additional car parking space in a fresh Section 4.55(1A) Modification Application.

The applicant has engaged Meares Consulting Engineers to prepare the engineering plans for the driveway and parking space and Fifth Season Landscapes to prepare the corresponding landscape and drainage plan.

This section 4.55(1A) application seeks to delete Condition 18 Vehicular Crossing Reinstatement to enable the dwelling to be served by the two existing driveway crossovers. The approved house has been designed to use the two existing driveway crossovers with the existing south eastern driveway serving the proposed double garage whilst the existing north western driveway crossover will be used for a circular driveway and access to a new carport. The north western driveway serviced the former carport. The development application as originally lodged did not request that either of the driveway cross overs be removed as it was always the intention of the owner to continue to utilise both driveway crossovers.

It is requested that Condition 1 – Approved Plans and Supporting Documentation be amended to include the following:

- Driveway Plan, Drawings No. 1-5 Revision A dated 30 April 2024, prepared by Meares Consulting.
- Landscape Plan and Drawing No. LCP-01 Revision A dated 19 February 2024, prepared by Fifth Season Landscapes.
- Drainage Plan Drawing No. SET-01 Revision A dated 19 February 2024, prepared by Fifth Season Landscapes.

This report has been prepared to accompany the section 4.55(1A) application and includes the information necessary for Council to assess and determine the application including:

- A background outlining the approved development;
- A brief description of the site context;
- Details and reasons for the proposed modifications;
- An environmental assessment; and
- Our conclusion and recommendations.

We have concluded that the proposed modification is a minor amendment to development consent DA2022/0751 with minimal environmental impact. The proposal will result in a development that is substantially the same as that originally approved and accordingly it is considered that the application satisfies the requirements to enable these modifications to be approved by Council pursuant to section 4.55(1A) of the EP&A Act.

2.0 Background

On 24 August 2022 Council granted development consent to Development Application No. DA2022/0751 for the construction of a dwelling house at 53 Arthur Street, Forestville.

Condition No. 18 of the Development Consent states:

“Vehicular Crossing Re-Instatement

The applicant is to reinstate the redundant vehicular crossing in accordance with Northern Beaches Council Drawing No. 3 Concrete Kerb Details and the driveways levels application approval. An Authorised Vehicle Crossing Contractor shall construct the associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath/grass. Prior to the pouring of concrete, the vehicular crossing is to be inspected by Council and a satisfactory “Vehicle Crossing Inspection” card issued.

A copy of the Vehicle Crossing Inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.”

Section 4.0 of this submission outlines the proposed modifications to the consent.

3.0 Site Description

Currently the approved two storey dwelling house is being constructed on the site. **Figure 1** is a photograph of the site showing the dwelling house under construction and the two (2) existing driveway crossovers.



Figure 1 Site Location



Figure 2 View South east along Arthur Street

Figure 2 is a view looking south east along Arthur Street that shows the 2 existing driveway crossovers and the yellow road marking indicating that there are “No Stopping” restrictions along both sides of this section of Arthur Street. The no stopping restrictions are due to the narrow nature of the road where a stopped vehicle would block the traffic lane in a location where the road takes a sweeping bend.

3.1 Surrounding Development

The subject site is located in a low density residential area. The site is to the north west of the Forestville neighborhood shops located on the intersection of Duke Street and Arthur Street. A respite centre adjoins the site to the west and is located on the corner of Arthur Street and Angophora Crescent.

4.0 Proposed Modification

When the owner of the development site lodged the development application for the two storey house, the subject of this development consent, it was their intention for both driveway crossovers to be maintained. This is clear in the development consent plans, Sheet 2 which shows the two driveway crossovers on the site. The eastern driveway crossover provides access to the double garage whilst the western driveway provides vehicular access to the site of the dwelling house where the former carport was located.

It has always been the intention of the applicant to create a circular driveway to enable cars to enter and exit the site in a forward direction and provide space for additional cars to be parked. The applicant proposes to join the two driveways with a turf cell which allows grass to grow through a trafficable structure to ensure that there is no erosion generated by cars and that the front setback retains a green landscaped presentation.

Although driveways and carports under certain circumstances can be constructed without development consent under the Exempt and Complying Development Codes SEPP as requested by Council this application is supported by engineering plans for the proposed driveway which demonstrate the following:

- A B99 vehicle can enter the approved double garage and reverse into the circular driveway and leave the site in a forward direction.
- That a B85 vehicle can drive into the north western driveway into the proposed parking space under the proposed carport reverse into the circular driveway and leave in a forward direction.
- That a B99 vehicle can enter either driveway and drive along the circular driveway and leave the site via the second driveway.

The landscape plan prepared by Fifth Season Landscapes indicates that the circular driveway would be constructed of a turf cell which allows grass to grow through the pavement to ensure that the rainwater drains through the driveway and that vehicles driving over this area will not cause erosion. The landscape plan also demonstrates that there will be proposed plantings in the front setback area to screen the second driveway from Arthur Street.

On street carparking is not available adjacent to the property nor for a significant section of Arthur Street, and accordingly it is necessary for all vehicles associated with the dwelling to be parked on the site. The owner of the property has 2 university aged children resulting in 4 cars being parked on the site each night. Furthermore, the owners' rural based parents often stay on the site from time to time for visiting family and attending medical appointments. The approved guest room has been provided primarily for visitation from their parents.

The site is located on a sweeping bend of Arthur Street and the garage is lower than the road surface. Backing a car out of the driveway increases the risk of an accident. Allowing the second driveway crossover will allow vehicles to drive into and out of the site in a forward direction which is significantly safer.

Condition 18 was imposed by Council to reinstate the kerb for the vehicular crossover described as a redundant vehicle crossing that provided access to the carport. Condition 18 is shown in Section 2 of this report. The reason stated for the condition in the development consent is as follows:

Reason: To facilitate suitable vehicular access to private property."

The deletion of the second driveway crossover conflicts with the reason provided for the condition. Deletion of the second driveway does not provide suitable vehicular access as it increases the risk of an accident backing out of the driveway and given the “No Stopping” restrictions prevents the necessary cars for the family to be parked on the site or adjacent to the site.

This application seeks to make the following amendments to Development Consent DA2022/751:

- Delete Condition 18 – Reinstate the Kerb for the Vehicular Crossover.
- Amend Condition 1 as follows:
 - Drawings No. 1-5 Revision A dated 30 April 2024, prepared by Meares Consulting.
 - Landscape Plan and Drawing No. LCP-01 Revision A dated 19 February 2024, prepared by Fifth Season Landscapes.
 - Drainage Plan Drawing No. SET-01 Revision A dated 19 February 2024, prepared by Fifth Season Landscapes.

5.0 Statutory Provisions

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that:

“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.”

Minimal Environmental Impact (section 4.55(1A)(a))

“(a) It is satisfied that the proposed modification is of minimal environmental impact”.

Comment

The retention of the existing driveway crossover that has been in existence for in excess of 30 years will have no environmental impact. The retention of the driveway crossover does not affect on street carparking as there are no stopping restrictions along Arthur Street. Retention of the existing driveway crossover would have a positive affect in that it would save resources in removing the existing driveway crossover and constructing a new kerb.

The attached landscaping plan, draining plan and civil engineering driveway plans formalise the proposed driveway and front setback landscaping that would ordinarily form part of a dwelling house and accordingly have no environmental impact. The landscape plan shows that a proposed roof structure will be located over the parking space which is in the form of a cantilevered carport that formalises the proposed parking area on the north western side of the site.

Substantially the Same Development (section 4.55(1A)(b))

“(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)”.

Comment

Removal of Condition 18 to retain the two driveway crossovers will result in the development being substantially the same as that approved. Development Consent was granted for the

construction of a two storey dwelling house on the site and by deleting Condition 18 a two storey dwelling house will still be approved for construction on the site.

The provision of the circular driveway and carport structure results in the development being substantially the same as originally granted as it was intended that the driveway and carport would have been constructed under the exempt development code however as requested by Council to retain the driveway crossover the driveway, carport and proposed landscaping now forms part of this application.

Notification (section 4.55(1A)(c))

“(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 modifications of a development consent”.*

It is a matter for Council to decide whether the subject application requires notification to neighbouring property owners.

Consideration of Submissions (section 4.55(1A)(d))

“(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”.

Should Council notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

Subsections (1) and (2) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in **Section 6** of this submission.

5.1.1 Matters for Consideration and Reasons for Granting Consent

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1A) of the EP&A Act as are of relevance to the proposed modification must be taken into consideration in determining the application for modification. These relevant matters are addressed in Section 6.0 of this Report.

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.

Comment

The reason why Council imposed Condition 18 has been discussed in Section 4.0 of this submission. A Council will often require a second driveway crossover to be removed to assist with providing on street carparking. This is not applicable in this situation as no stopping restrictions apply along this section of Arthur Street. Given that there is no on street carparking available, the second driveway crossover assists with providing additional off street carparking that is required for the family and visitors. The two driveway crossovers have been in existence for in excess of 30 years. The requirement to reinstate kerb and gutter in the location of the western driveway will reduce traffic safety as it will require vehicles to reverse up a slope onto a curved section of road. Retention of the 2 driveways will allow vehicles to enter and exit in a forward direction significantly improving traffic and pedestrian safety.

In the request for additional information for the original Section 4.55(1A) Modification Application, Council's engineers indicated that the plans to be submitted to support the retention of the second driveway should be in accordance with Section C2 Traffic, Access and Safety.

Section C2 of the Warringah DCP contains six objectives which are discussed below:

“(a) to minimise traffic hazards”

Comment

Providing the ability for vehicles to drive in and out of the site in a forward direction significantly reduces traffic hazards. As discussed in this SEE the subject site is located on a bend on a narrow road and reversing up the driveway into the roadway is more hazardous than driving out in a forward direction.

“(b) To minimise vehicles queuing on public roads”

Comment

Retaining the second driveway allows vehicles to leave and enter the site in a forward direction as opposed to reversing into or out of the site. When vehicles reverse into or out of a site it requires vehicles to stop and queue whilst the additional manoeuvre is undertaken.

“(c) To minimise the number of vehicle crossings in a street.”

Comment

The property currently enjoys two driveway cross overs which reflects the unusual width of this site. The subject site has a width of approximately 30m and the distance between the two driveways is 13m. 13m provides appropriate site distances for pedestrians and vehicles. The distance between the driveways is consistent with other driveways in the locality as many of the blocks in the locality are 17m wide.

“(d) To minimise traffic, pedestrian and cyclist conflict.”

Comment

The second driveway will allow vehicles to enter and leave the site in a forward direction that will have a significant improvement on traffic, pedestrian and cyclist safety.

“(e) To minimise interference with public transport facilities.”

Comment

The retention of the second driveway does not interfere with public transport facilities.

“(f) To minimise the loss of on street kerb side parking.”

Comment

The two driveway crossovers on the site have been in existence for in excess of 40 years and the retention of the existing driveway will not result in loss of street kerbside parking.

The engineering plans prepared by Meares Consulting demonstrate that the driveway is consistent with the relevant Australian standards and meets the technical requirements of the development control plan.

5.2 EP&A Regulation 2021

In accordance with section 99 of the EP&A Regulation, this application will be made in the form approved by the Planning secretary via the NSW Planning Portal and is accompanied by all necessary information and documents required by the EP&A Regulation.

Pursuant to section 100(1) of the Regulation, **Table 2** provides the information required to be submitted with an application to modify a development consent under section 4.55.

Table 2 - Information Required by Section 100(1) of the EP&A Regulation

Requirement	Details
(a) Name and address of applicant	Mr David Mackay, 53 Arthur Street, Forestville
(b) Description of development	Construction of a two storey dwelling house.
(c) Site address	53 Arthur Street, Forestville
(d) Description of the proposed modifications	To delete Condition 18 as detailed within this Planning Submission. It is proposed to amend Condition 1 to insert the engineering plans prepared by Meares Consulting and the landscape and drainage plan prepared by Fifth Season Landscapes as detailed in this planning submission.
(e) Statement describing intent of modification	Modification under Section 4.55(1A) of the EP&A Act as outlined in this Planning Submission.
(f) Description of expected impacts	The proposal relates to the deletion of Condition 18 and including the engineering, landscape and drainage plans in condition 1. The assessment under this Planning Submission demonstrates that the proposal will have minimal environmental impact.
(g) Undertaking that the development will remain substantially the same as that originally approved	The proposal remains substantially the same as the development for which consent was originally granted as the modifications relate to retaining the two (2) existing driveway crossovers at the site for the new dwelling. Including the driveway, landscaping and carport into the approved plans still results in a dwelling house being approved on the site. It was the intention of the owner to construct the driveway and carport under the exempt development code and accordingly there will be no change to the final dwelling house as originally proposed.
(h) Biodiversity credits	There are no biodiversity credits involved in this application.
(i) Owner's consent	Owner's consent accompanies the application.
(j) Application to Court or Council	The modification application is being lodged with Northern Beaches Council.

6.0 Environmental Planning Assessment

The following subsections provide an environmental assessment of the proposed modifications in respect of the relevant matters for consideration under section 4.15(1).

The key environmental planning issues associated with the proposed development are:

- Environmental Planning Instruments**

Deletion of Condition 18 relating to the driveway crossover and including the driveway, landscaping and carport in plans referred to in Condition 1 does not affect the permissibility of the approved dwelling house on the site under the R2 Low Density Residential zone of the Warringah Local Environmental Plan 2011.

Retention of the 2 driveway crossovers and proposed amendment to Condition 1 is not in conflict with any provisions of the Northern Beaches Development Control Plan.

Deletion of Condition 18 allowing the existing driveway crossover to be retained and formalising the driveway, landscaping and carport does not detrimentally affect the ability to construct the dwelling house but rather allows for additional off street carparking to be provided on the site in a location where on street carparking is not available and for motor vehicles to be able to enter and exit the site in a forward direction.

- **Carparking**

The deletion of Condition 18 to allow the two existing driveway crossovers on the site to be retained will have a positive effect on the availability of off street carparking. This is important as Arthur Street has no stopping restrictions on either side of the road and accordingly all carparking, including visitors, must be contained on the site. Reinstating the kerb in the location of the western driveway will not increase the availability of on street carparking and will not change the functioning of Arthur Street as a public road. There will be no positive benefit generated by reinstating the kerb and it will just add additional expense and resources to construct a kerb where there is no public benefit generated by the work.

- **Traffic and Pedestrian Safety**

The existing driveway crossover has been in existence for in excess of 40 years without any known pedestrian accidents. There is a distance of approximately 13 metres between the two driveways which both have widths of approximately 3 metres. Accordingly, pedestrians do not have to negotiate a very wide driveway but rather two standard width driveways with a 13 metre separation distance. Retention of the 2 driveway crossovers will allow vehicles to enter and exit the site in a forward direction significantly improving traffic and pedestrian safety.

- **Function of the House**

The dwelling was specifically designed to have two driveways as the owners of the dwelling have four cars with two full time workers, two university aged children with cars and elderly parents that regularly visit the property from rural NSW to attend medical appointments in Sydney.

- **Landscaping**

It is the intention to install a turf cell along the second driveway that enables grass to grow through the structure that supports a car along the driveway. This ensures that the grass is protected from damage caused by motor vehicles which prevents erosion and dust but importantly maintains a landscaped presentation to the street. The landscape plan prepared by Fifth Season Landscape Architects is submitted with this application.

7.0 Conclusion and Recommendations

Deletion of Condition 18 of development consent DA2022/0751 will have no impact on the number of on street carparking spaces available due to the no stopping restrictions out the front of the site and there will be no change to pedestrian or traffic safety in the locality. Deletion of Condition 18 will assist in providing additional off street carparking for the family and visitors that often needs to accommodate five (5) cars.

It is proposed to create a circular driveway using a turf cell in the area adjacent to the second driveway crossover to allow vehicles to drive in and out of the site in a forward direction on a grass surface without damaging the turf. This has a positive environmental outcome as it reduces dust and erosion and will still maintain a landscaped setting to the street frontage of the site. The landscape plan prepared by Fifth Season Landscape Architects is submitted with this application.

The driveway has been designed by Meares Consulting and the engineering plans are proposed to be included in Condition 1. The plans include turning circles for B85 and B99 vehicles and the driveway long sections.

This submission, accompanies an application under section 4.55(1A) of the EP&A Act to amend Condition 1 to include driveway plans, lands ape plans including a carport and drainage

plans and to delete Condition 18 of development consent DA2022/0751 (as modified). The proposal involves a minor modification to allow the retention of the second driveway crossover and to formalise the driveway design, location of the carport and landscaping. This modification is of minimal environmental impact and accordingly can be modified pursuant to Section 4.55(1A). This assessment has provided the justification for why it is appropriate for this amendment to be considered under Section 4.55(1A) as the deletion of Condition 18 and amendment to Condition 1 will result in a development substantially the same as that originally approved and will have minimal environmental impacts.

Accordingly, the proposal is considered to satisfy the requirements to enable these modifications to be approved by Council pursuant to Section 4.55(1A) of the EP&A Act.

Prepared by: Warwick Gosling, Partner

Reviewed by: Rob Player, Director