

RESIDENTIAL DEVELOPMENT – S96(1A) APPLICATION ASSESSMENT REPORT

Modification Application Number: MOD2017/0028
Development Application Number: DA2013/0587
Planner: Nick England
Property Address: Lot 2506 DP 752038 , Lot 2506/ Bundaleer Street BELROSE,
Proposal Description: Modification of Development Consent DA2013/0587 granted for Construction of a Boarding House

Recommendation: **APPROVED**

Clause 20 Variation: No

Proposal in Detail: The application is made pursuant to Section 96(1A) of the Environmental Planning & Assessment Act 1979.
 In detail, the modification relates to installation of sewage line and small pump station/tank (2m² in area and located underground) adjoining the northern boundary of the site. The sewer line will run approximately for 83m along the northern boundary, to connect with the Sydney Water line on the Linden Avenue frontage of the site.
 This line and pump will replace the on-site wastewater disposal that formed part of the original approval for the boarding house. The application will also involve the deletion of existing Condition of Consent No.38 Waste Water System, as the connection to a reticulated sewage disposal will now make the approved system for on-site disposal of wastewater obsolete.

History and Background: History of most relevance to the proposed modification relates to the Development Consent No.2013/0587 for “Construction of a boarding house” issued by Council (Deferred Commencement) on 11 December 2013.

- In detail, the consent included:
- 31 rooms;
 - A Manager’s apartment;
 - Nine (9) parking spaces;
 - Seven (7) motorbike spaces; and
 - Seven (7) bicycle spaces.

Plans Reference

Drawing Number	Title	Issue	Dated	Drawn By
S-107	On-site sewerage pump location	D	27-10-2016	Vigor Master Pty Ltd

Report Section	Applicable – Yes or No
Section 1 – Code Assessment	Yes
Section 2 – Issues Assessment	Yes
Section 3 – Site Inspection	Yes

Notification Required:	Yes	14DAYS
Submissions Received:	Yes	Number of Submissions: 2
Cost of Works:	N/A (modification)	
Section 94A Applicable:	No	TOTAL: N/A

Section 96(1A) EPA ACT 1979	
Section 96(1A) (a) – Is the Modification to consent of Minimal Environmental impact?	Yes
Section 96(1A) (b) – Would the consent as proposed to be modified be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was previously modified?	Yes
Section 96(1A) (c) & (d) – Has the application been on Public Exhibition? Have you considered any submissions?	Yes Yes
Section 96 (3) – Have you considered such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application	Yes

SECTION 1 – CODE ASSESSMENT REPORT

ENVIRONMENTAL PLANNING INSTRUMENTS

Warringah Local Environmental Plan 2000

Locality: C8 Belrose North

Development Definition: Housing

Category of Development: Category 2

Desired Future Character Statement:

“The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of

disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Middle Harbour.”

Is the proposed modification consistent with the Locality’s Desired Future Character Statement?

Yes

BUILT FORM CONTROLS

The Built Form Controls are not considered relevant to the proposed modification, as all proposed works are not related to any new “building” and are located beneath the existing ground level.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

A consideration of the following relevant General Principles of Development Control is provided below:

General Principles	Applies	Comments	Complies
CL42 Construction Sites	Yes	Existing conditions of consent are adequate to manage the likely impacts of any construction works.	Yes
CL48 Potentially Contaminated Land	Yes	Requirements of this clause have been addressed under the original consent.	Yes
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	Yes	National Park land is within 50m of the site. Requirements of this clause have been addressed under the existing conditions.	Yes
CL54 Provision and Location of Utility Services	Yes	The proposed modification is to in effect connect to a utility service (sewage). Adequate connection is hence provided in this regard.	Yes
CL58 Protection of Existing Flora	Yes	The location of the proposed sewage line and pump station is within an area of the site that has no significant existing vegetation. No adverse impact on the existing flora on the site is hence likely.	Yes
CL78 Erosion & Sedimentation	Yes	Requirements of this clause have been addressed under the original consent.	Yes
CL80 Notice to Metropolitan Aboriginal Land	Yes	Requirements of this clause have been addressed under the original consent.	Yes

General Principles	Applies	Comments	Complies
Council and the National Parks and Wildlife Service			
CL83 Development of Known or Potential Archaeological Sites	Yes	Requirements of this clause have been addressed under the original consent.	Yes

SCHEDULES

Schedule	Applicable	Compliant
Schedule 8 Site analysis	Yes	Yes

OTHER RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS:

STATE ENVIRONMENTAL PLANNING POLICIES, REGIONAL ENVIRONMENTAL PLANS

POLICY	ASSESSMENT	YES /NO /N/A	COMPLIES
SEPP INFRASTRUCTURE	Is the proposal for a swimming pool, or Within 30m of an overhead line support structure? Within 5m of an overhead power line?	Yes	Yes

EPA REGULATION CONSIDERATIONS:

Regulation Clause	Applicable	Conditioned
Clause 54 & 109 (Stop the Clock)	N/A	N/A
Clause 92 (Demolition of Structures)	N/A	N/A
Clause 92 (Government Coastal Policy)	N/A	N/A
Clause 93 & 94 (Fire Safety)	N/A	N/A
Clause 94 (Upgrade of Building for Disability Access)	N/A	N/A
Clause 98 (BCA)	N/A	N/A

REFERRALS

Referral Body Internal	Comments	Consent Recommended
<p>Development Engineers</p>	<p>Council's Development Engineer has advised the following:</p> <p><i>"The application proposes the deletion of a condition of consent relating to the disposal of sewage from the development and replacing the condition with a requirement to provide a low pressure pump out line from the site into an existing sewer manhole in Forest Way at the intersection of Wyatt Ave. It is unclear from the submitted information if the line is to be a private line or defined as a Sydney Water asset.</i></p> <p><i>A review of the submitted plans indicates the presence of an existing pump out line from the adjoining waste site which contains the leachate. This line appears on Council's GIS as a Sewer and as such would come under the care and control of Sydney Water.</i></p> <p><i>Provided that the applicant can demonstrate that the proposed line will be deemed a Sydney Water Asset once the work is completed then as the works will be undertaken under the Sydney Water Act then there is no objection to approval and no conditions are recommended."</i></p> <p><u>Planners comment:</u> As the future operation and maintenance of reticulated sewage is not the direct responsibility of Council, this is not a relevant matter in the assessment of the impact of the proposal. Council could neither condition this matter as it is not a direct responsibility of Council to enforce. This is governed by the service provider of the reticulated system, which in this instance is Sydney Water. The applicant will need to comply with all service and maintenance of the service provider. In the instance of any failure of the system, sufficient statutory power is nonetheless retained by both Council and the service provider, to mitigate any adverse impact.</p>	<p>Yes</p>
<p>Health and Protection (Unsewered Lands)</p>	<p>The Health and Protection Officer has provided the following general comments:</p> <p><i>"No objections to the removal of the condition 38 subject to the recommended alternative conditions as the holding tank for the sewer pump will require approval to install and approval to operate."</i></p> <p><u>Planners comment:</u> Two (2) new conditions are proposed, as follows:</p> <p>Approval to Install an On-site Sewage Management System</p> <p>Prior to the release of the Construction Certificate, the applicant must submit an 'Approval to Install an On Site Sewage Management System' for the sewer pump holding tank to the Certifying Authority.</p> <p>Details demonstrating compliance are to be submitted to the Certifying Authority.</p> <p>Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993</p> <p>Approval to Operate the On-site Sewage Management System</p> <p>Prior to the release of the Occupation Certificate, the applicant must submit an 'Approval to Operate an On Site Sewage Management System' for the sewer pump holding tank to the Certifying Authority.</p> <p>Reason: <i>To fulfill the requirements under Section 68 of the Local Government Act 1993. (DACHPFPOC4)</i></p>	<p>Yes</p>

Referral Body Internal	Comments	Consent Recommended
	These additional conditions are considered acceptable to apply to the amended Notice of Determination, in order to meet the requirements of the Local Government Act 1993.	

Referral Body External	Comments	Consent Recommended
Ausgrid	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.	Yes

APPLICABLE LEGISLATION/ EPI'S /POLICIES:	
EPA Act 1979	Yes
EPA Regulations 2000	Yes
Local Government Act 1993	Yes
SEPP Infrastructure	Yes
WLEP 2000	Yes
WDCP 2000	Yes

Section 79C "Matters for Consideration"	
Section 79C (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 79C (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	N/A
Section 79C (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 79C (1) (a)(iia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	N/A
Section 79C (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	Yes
Section 79C (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	Yes
Section 79C (1) (c) – Is the site suitable for the development?	Yes
Section 79C (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regs?	Yes
Section 79C (1) (e) – Is the proposal in the public interest?	Yes

SECTION 2 – ISSUES

PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the EPA Regulation 2000 and the applicable Development Control Plan.

As a result of the public exhibition of the application Council received two (2) submissions from the following.

Name	Address
Andrew Lowry	Covenant Christian School, 212 Forest Way Belrose
Donal Carr	2593 Bundaleer Street, Belrose

The issues raised in the submission have been summarised and considered as follows

Issue: *The proposed modification is outside of the scope of the original consent.*

Response: The proposed modification relates to an amended utility service for the approved 31 room boarding house. Replacing the approved on-site waste water management system with a connection to a Sydney Water reticulated system will not change any other aspect of the approved boarding house. This is certainly "*substantially the same development*" as originally approved and is a basic pre-condition for any modification application under the existing legislation.

Issue: *The proposed modification is not of a minor environmental impact given that the connection to the proposed private sewer line will also require utility service works in the adjoining road reserves.*

Response: The proposed works will require a minor level of excavation for the sewer line and the associated pump machinery, which will only occupy approximately 2m² of site area. The location of the line in the road reserve (which is not part of this application) is a form of essential infrastructure, common in urban areas and located on land that is specifically set aside for such purposes. It is therefore entirely reasonable to assert that the proposed modification is of a minor environmental impact.

Issue: *The works will have an adverse impact on the local road network.*

Response: The proposed modification will result in no change to the nature and intensity of the approved development. Therefore, no adverse impact on the functioning of the local road network is likely as a result of the proposed modification.

Issue: *The proposed modification is not an appropriate approval process for these works.*

Response: The proposed Section 96(1A) application made under the provisions of the Environmental Planning & Assessment Act 1979 is the correct pathway for the legislative approval of the proposed works. Further, modified conditions of development consent will require that operational and installation approval processes under the Local Government Act 1993 are complied with.

Issue: *The application does not address the relevant legislative provisions*

Response: This is not necessarily a requirement of any documentation that is to be provided with any application to modify a development consent. Nonetheless, a consideration of the relevant legislation is provided elsewhere in this report.

Issue: *The application applies to the road reserve and appropriate approval should be gained from the relevant authority*

Response: The documentation provided with the application makes it clear that the proposed works will only apply to the land upon which the development consent relates, being Lot 2506 on Bundaleer Street, Belrose. Works for infrastructure purposes on land set aside for such purposes and undertaken by utility authorities, do not require development consent under existing legislation.

Issue: *The proposed works will cause the Covenant Christian School considerable disruption.*

Response: The extent of the works proposed in the modification will be minor and relate to a utility service. The impacts of the proposed modification are hence considered to be minor and not result in any lasting adverse impact on any adjoining land use to the subject site.

Issue: *What measures will be undertaken to ensure no overflow of sewage if the pump facility fails?*

Response: Additional conditions of consent will require the further detailed approval to install and operate the sewage pump facility, which will ensure that the facility is installed to an acceptable standard. Council retains the statutory authority to require that the applicant and owner of the property to rectify any failure in this system, should it happen in the future.

Issue: *No objection is raised in principle to the modifications, subject to ensuring no damage to other waste management and public infrastructure services.*

Response: The proposed modification relates to a sewer line and associated pump only on the land that relates to the original development consent, which applies only Lot 2506 in DP 752038. No consent can be inferred or implied in this modification for any connection to a future public line located on the adjoining road reserve. An additional condition of consent is recommended to ensure that no works on the road reserve outside of the subject land forms part of the consent.

SECTION 3 – SITE INSPECTION ANALYSIS



SITE AREA: 1.64 hectares

Detail existing onsite structures: The land is currently occupied by a two-storey building erected for the purposes of a boarding house, with associated car parking and landscaping.

Site Features: Vegetation on west and south boundaries; rock outcrops

Site constraints and other considerations	
Bushfire Prone?	Yes
Flood Prone?	No
Affected by Acid Sulphate Soils	No
Located within 40m of any natural watercourse?	No
Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW	No

Site constraints and other considerations	
Coastal Policy?	
Located within 100m of the mean high watermark?	No
Located within an area identified as a Wave Impact Zone?	No
Any items of heritage significance located upon it?	No
Located within the vicinity of any items of heritage significance?	No
Located within an area identified as potential land slip?	No
Is the development Integrated?	No
Does the development require concurrence?	No
Is the site owned or is the DA made by the "Crown"?	No
Have you reviewed the DP and s88B instrument?	Yes
Does the proposal impact upon any easements / Rights of Way?	No

SITE INSPECTION / DESKTOP ASSESSMENT UNDERTAKEN BY:

Does the site inspection confirm the assessment undertaken against the relevant EPI's?

Yes

Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?

No

Are there any existing unauthorised works on site?

No

If YES has the application been referred to compliance section for comments?

N/A



Signed

Date

Nick England, Planner

SECTION 4 – APPLICATION DETERMINATION

Conclusion:

The proposal has been assessed against the relevant matters for consideration under Section 79C and 96(1A) of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

RECOMMENDATION - APPROVAL

That Council as the consent authority:

APPROVE THE MODIFICATION OF THE DEVELOPMENT CONSENT subject to the following amended and deleted conditions detailed within the associated notice of determination:

- a) Modify Condition No.5 – Approved Plans and Supporting Documentation to provide new Condition No.5 A – Approved Plans and Supporting Documentation to read as follows:
“The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S-107 Issue D	27-10-2016	Vigor Master Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

d) No consent is granted to any sewage pipe line outside of the land subject to this consent or on any adjoining road reserve.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)”

- b) Delete Condition No.12 – Approval of the On-site Sewage Management System and replace with new Condition No.12(a) - Approval of the On-site Sewage Management System which reads:

“Prior to the release of the Construction Certificate, the applicant must submit an ‘Approval to Install an On Site Sewage Management System’ for the sewer pump holding tank to the Certifying Authority.

Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993”

- c) Delete Condition No.38 Waste Water System and replace with Condition No.38(a) - Approval to Operate the On-site Sewage Management System which reads:

"Prior to the release of the Occupation Certificate, the applicant must submit an 'Approval to Operate an On Site Sewage Management System' for the sewer pump holding tank to the Certifying Authority.

Reason: To fulfill the requirements under Section 68 of the Local Government Act 1993. (DACHPFPOC4)"

"I am aware of Council's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest"



Signed

Date: 1 May 2016

Nick England, Planner

The application is determined under the delegated authority of:



Signed

Date: 4 May 2017

Steven Findlay, Planning Assessment Manager