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Town Planners

30 January 2015

The General Manager
Warringah Council
Civic Centre,
DEE WHY NSW 2099

Attn. Luke Perry

Dear Sir,

REQUEST FOR MODIFICATION OF DEVELOPMENT CONSENT DA2001/0576
Unit 17, 295-297 Condamine Street Manly Vale

1. INTRODUCTION

This application is made in conjunction with DA 2014/1214 and in response to the Council letter of the 21st January 2015. DA 2014/1214 proposes the fit out and use of the subject ground floor premises as a specialist bridal and wedding attire shop with associated signage. Condition 65 of consent 2001/0576 required that this space not be used as a restaurant, cafe, take away food shop or retail shop or the like. The SOEE submitted with DA 2014/1214 provides justification for the intended land use including specialist traffic and parking advice going to the characteristics of the intended land use and the adequacy of the off-street parking to service the anticipated demand. The SOEE also provides an explanation going to the operation of condition 56 of DA 2001/0576 and the intended use, but the Council has directed that to consider DA 2014/1214 requires an application to modify condition 65 of DA 2001/0576. This application is made in accordance with that direction.

2. DETAIL OF THE CHANGES

Condition 65 requires:

The commercial floor space of the development is not to be used as a restaurant, cafe, take-away food shop, retail shop or the like. The occupation of the commercial floor space will require the submission of a development application for the use of the premises.

DA 2014/1214 is the application for the use of the space in accordance with the second sentence of this condition. This application for modification of consent 2001/0576 proposes that the first sentence of the condition be retained with the addition after the words *retail shop* with the following *other than a bridal gown and wedding attire shop as per DA 2014/1214*.

3. APPLICATION FOR MODIFICATION

The application is made pursuant to S.96 (1A) of the EP & A Act 1979. S.96 (1A) of the Act provides:

(1A) Modifications involving minimal environmental impact

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, 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*
- (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.*

Subsections (1), (2) and (5) do not apply to such a modification.

In this instance the modification sought has no environmental impact as it is concerned solely with the wording of consent 2001/0576. A consideration of the impacts associated with the intended land use is a matter for DA 2014/1214.

5.0 CONCLUSION

This application is procedural to enable a consideration and determination of DA 2014/1214. We would be pleased to clarify or expand upon this submission as maybe necessary.

6.0 NOTIFICATION

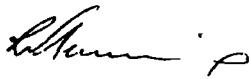
The Council's customer service staff advise that the form referred to at P4 of 11 for the non notification check list is no longer available and that the written submission accompanying the application should address the reasons why the application should not be notified. In this instance the modification sought is procedural and the details of the intended use have been the subject of notification in accordance with the Council adopted practice and policy. Accordingly, any individual who objects to the intended land use, or even that its outcome is contrary to the original intention of condition 65 of DA2001/0576 has had the opportunity to voice that objection via the notification of DA 2014/1214. As such any notification required by this modification application is pointless without the details of DA 2014/1214 also being available and that application has already been notified and no public submission received. In the circumstances any requirement for notification is purely procedural and without material benefit.

7.0 OWNERS CONSENT

We have sought the owner's consent to the making of this application, but formal agreement must await the next SP meeting. It is the managing agents opinion, and one in which I concur, that the owners corporation and the owner of unit 17 by the grant of owners consent to DA 2014/1214 have granted their consent to the Council consideration of the modification of condition 65 of DA2001/0576 given that the intent of that application was clearly to obviate the operation of the condition. The logic seems inescapable.

Yours sincerely

BOSTON BLYTH FLEMING

A handwritten signature in cursive script, appearing to read 'Ross Fleming', followed by a small flourish.

Ross Fleming