

5 March 2019

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Mr John McKee
General Manager
Ku-ring-gai Council
818 Pacific Highway
Gordon NSW

Atten: Scott McInnes (Executive Assessment Officer)

SECTION 4.55(1A) MODIFICATION APPLICATION TO DA0058/18 161-163 AND 185A FOX VALLEY ROAD, WAHROONGA

Dear Scott,

This application has been prepared by Ethos Urban on behalf of Bluestone Capital Ventures (Wahroonga) Pty Ltd, pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent DA0058/18 for the demolition of existing structures and construction of a temporary display suite (exhibition home) with carparking and associated works relating to 161-163 and 185A Fox Valley Road, Wahroonga (the site).

The proposed modification seeks consent to extend the time limitation imposed on the operation of the display suite in Condition 54 from two (2) years to five (5) years. The modification application does not propose any physical works. The display suite is not intended to be permanent and will be removed to facilitate residential development of the subject site in the future in accordance with Concept Approval MP07_0166, however, the two (2) year limitation is considered overly restrictive given existing market conditions, that marketing and sales activities are likely to be staged and that the display suite is a permitted use on the land under the Ku-ring-gai Local Environmental Plan 2015.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in section 4.55(1A) of the EP&A Act. This application is accompanied by a letter of support prepared by Seventh Day Adventist Schools (Greater Sydney) Limited (**Attachment A**).

1.0 Consent proposed to be modified

On 17 December 2018 the Ku-ring-gai Local Planning Panel (KLPP) issued Development Consent DA0058/18 for the demolition of existing structures and construction of a temporary display suite (exhibition home) with carparking and associated works.

2.0 Proposed modifications to the consent

The proposed modification to the development consent comprises an amendment to Condition 54 to extend the operation of the display suite from two (2) years to five (5) years from the date of the Occupation Certificate.

This will enable the display suite to operate until such time that the site is redeveloped for residential uses pursuant to Concept Approval MP07_0166. The display suite is not intended to be permanent, however, the restriction to two (2) years imposed in the consent is considered unduly onerous and inconsistent with existing residential market conditions and the fact that the delivery and marketing of residential buildings within the Central Church precinct is likely to be staged.

The modification application does not propose any physical works. The proposed modifications are described in more detail below.

2.1 Modifications to the consent

The proposed modifications described above necessitate amendments to the conditions which are identified below. Words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in **bold italics**.

Condition 54 Time Limited consent

Pursuant to Section 4.17(1)(d) of the Environmental Planning and Assessment Act 1979, this consent is limited to a period of ~~two~~ **five** years from the date of the issue of an Occupation Certificate. Notice of commencement must be provided in writing to Council prior to the use commencing.

At the cessation of the ~~two~~ **five** years and in accordance with Section 4.17(1)(e) of the Environmental Planning and Assessment Act 1979, the use is to cease and the buildings and works are to be removed.

Any application for extension of duration of the consent is to be made to Council no later than six months prior to the lapsing of this consent.

Reason: To ensure the use is of a temporary nature

3.0 Substantially the same development

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if *“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)”*.

The development, as proposed to be modified, is substantially the same development as that originally approved in that it:

- The proposal is limited to the extension of the operation of the display suite from two (2) years to five (5) years;
- The approved layout is remaining unchanged therefore the Wahroonga Adventist School’s basketball courts can be constructed and operate concurrently, therefore it is not necessary for the display suite to cease use before the basketball courts commence operation (**Attachment A**);
- The proposal is not seeking consent for any physical works, therefore the proposal does not result in any additional adverse impacts on the residential amenity, access or traffic beyond the approved development;
- The proposal does not change the approved land use as a display suite;
- The proposal is not seeking consent to modify the approved floor space, building envelope, vehicle access arrangements, car parking or any other key planning parameters approved on the site; and
- The environmental impacts of the development are minimal namely the built form, traffic and parking and other environmental impacts are minimal and compatible with the locality, such that the prolonged duration of operation will not result in any adverse impacts.

4.0 Environmental assessment

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if *“it is satisfied that the proposed modification is of minimal environmental impact”*. Under section 4.55(3) the consent Authority must also take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

4.1 Ku-ring-gai Local Environmental Plan 2015

Under the Ku-ring-gai LEP the proposed development is defined as an exhibition home which is permitted with development consent within the R4 High Density Residential zone applicable to the subject site. The approved use as a display suite is and remains consistent with the objectives of the zone as it will facilitate the future delivery of new housing to meet the needs of the local community in a location close to public transport, services and employment opportunities. The proposed modification does not change or impact on the use of the site for this purpose and is therefore permissible with consent. Additionally, the development complies with the maximum building height and floor space ratio development standards that are applicable to the site.

Accordingly, the amendment to allow the extended operation of the display suite for five (5) years is permissible with consent and consistent with the R4 High Density Residential zone.

4.2 Ku-ring-gai Development Control Plan 2015

The proposed modification does not alter the level of compliance with the Ku-ring-gai Development Control Plan 2015 from that assessed and determined to be acceptable in the original Development Application DA0058/18.

4.3 Conclusion: Minimal Environmental Impact

In summary, as discussed in the preceding sections, Council can be satisfied that the proposed modifications will have no material environmental impacts as a result of seeking consent for an extension of the operation of the display suite from two (2) years to five (5) years from the date of the occupation certificate. The proposed modifications are limited to allowing the display to operate on the site for five (5) years until the site is redeveloped. Importantly, the proposed modification does not involve any additional works beyond that has been approved and will not result in any additional adverse impacts on residential amenity, built form, access or traffic.

It is considered that the consent authority is able to assess and determine the application under Section 4.55(1A) on the basis that the proposed modification will clearly have minimal environmental impact within the site and on the surrounding area. As demonstrated in this section, the degree of impact of the proposed modification is virtually nil.

4.4 Social Impact

The modification is not seeking consent for any physical works therefore the modifications do not result in any potential social and construction impacts by allowing for both the basketball courts for the school to the north and the approved development to be constructed and operate concurrently. Therefore, the extension of time for the operation of the display suite will not impact on the delivery and use of the basketball courts pursuant to State Significant Approval (SSD 5535).

4.5 Ku-ring-gai Council Planning Panel's Reasons for decision

Pursuant to S4.55(3) of the Environmental Planning and Assessment Act 19179 the consent authority is required to take into consideration the reasons given for the grant of the consent that is required to be modified. For the assessment of the KLPP's reason for approval from the planning panel meeting on the 17 December 2018 refer to **Table 1** below.

Table 1 Assessment against the Ku-ring-gai Council’s reasons for the decision

Reason for Decision	Assessment
The development will not unreasonably impact on the traffic conditions in the area or the amenity of the surrounding residents.	<p>The approved vehicle access and car parking arrangements are not being modified. The extension of time to five (5) years does not result in a requirement for additional car parking spaces or changes to the approved separate ingress and egress via two driveways in a loop arrangement. The extension of time for the operation of the display suite will not result in any additional traffic generation therefore not impacting on the surrounding street network.</p> <p>The proposal is not seeking consent for any physical works therefore, the impact of the proposed modification having regard to residential amenity is minimal.</p>

4.6 Reasons given for granting consent to modify the application

In summary, as discussed in the preceding sections the reasons given for granting consent to extend the two (2) year time restriction on the operation of the approved display suite to five (5) years are:

- The extension of time is not seeking to modify the approved layout of the display suite therefore, the proposal does not result in any impacts on the Wahroonga Adventist School including the construction and use of the basketball courts located to the north of the approved display suite.
- The proposed modification does not change or impact on the use of the site for this purpose and is therefore permissible with consent.
- The display suite is consistent with the approved display suite by not being intended to be permanent and will be demolished in preparation for the redevelopment of the site for the staged construction of the residential flat buildings as approved in the Wahroonga Estate Concept Plan (MP 07_0166).
- The extension of time does not seek consent for any physical works therefore, the modification is not resulting in any additional impacts on the surrounding traffic network or the amenity of the surrounding residents beyond the approved display suite.

5.0 Conclusion

The proposed modification seeks to extend the two (2) year time restriction on the operation of the approved display suite to five (5) years, in order to allow for the orderly and economic conduct of sales and marketing activities for the future residential development of the site pursuant to Concept Approval MP07_0166.

In accordance with section 4.55(1A) of the EP&A Act, Council may modify the consent as:

- The approved display suite is a permissible use in the R4 High Density Residential Zone under the Ku-ring-gai LEP 2015.
- The proposed modification does not involve any additional works beyond that has been approved and will not result in any additional adverse impacts on residential amenity, built form, access or traffic.
- The proposed modification is of minimal environmental impact.
- The consent, as proposed to be modified, is substantially the same development as development for which the consent was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.

Yours sincerely,



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