

21 February 2017

Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Ms Jane Flanagan / Amy Robertson

Dear Jane / Amy

RE: SUBMISSION TO MAJOR PROJECT 08_0167 MOD 3
BELLE O'CONNOR STREET, SOUTH WEST ROCKS

We write in relation to the proposed modification of Major Project 08_0167 which seeks to incorporate a senior's living development into the approved residential subdivision. We provide this submission for and on behalf of Mr & Mrs Barry and Margaret Walls, adjoining landowners.

Our concerns with the proposed modification are expressed below:

1. The proposed incorporation of Senior's Housing does not constitute a modification: The documentation submitted with the proposed Section 75W modification does not describe how the proposed incorporation of a senior's housing development is substantially the same as that approved.

In this regard, it is our opinion that the proposed senior's housing development is not materially or essentially the same development as that granted and we note the following in support:

- Senior's Housing and dwelling houses are separately defined land uses and the proposed modification is therefore considered to be qualitatively different to that originally granted. In this regard, it is noted that the original application did not include tennis courts, bowling green, club house, pool, amenity block or club house or large recreation area. These features are considered to be substantially different to the original approval;
- The area of public park (open space) is proposed to be significantly reduced;
- The total number of lots increases by 27% from 277 to 354 (120 low density residential lots and 234 Senior's Housing parcels). The development is therefore considered to be quantitatively different to that originally granted;

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- The road layout has been altered significantly resulting in changes to the connectivity between the overall development;

With the above in mind, it is considered that the description of the process for consideration of a proposed modification of development handed down by Bignold J in *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 is relevant. Paragraphs 55 and 56 of the above decision read:

“55. 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 approved development.

56. The comparative task does not merely involve a comparison of the physical features or components of the development as approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”

We would therefore argue that the Major Project granted consent to a residential subdivision and the introduction of a Senior's Housing development including the landscape features above as well as the various changes to the subdivision is not substantially the same as that originally approved.

2. Modification 2 is still unresolved: A modification to the Major Project was lodged in September 2016. This modification currently remains unresolved. This modification seeks to alter the staging of the development by allowing the western stages, stages 10 and 11, to be developed independently of stages 1 through 9. It is noted that the Office of Environment & Heritage, New South Wales Rural Fire Service and Roads & Maritime Services have all raised concerns with this proposed modification.

Modification 3, the subject of this submission, falls silent with respect to proposed Modification 2 and does not consider pertinent matters which may arise should proposed Modification 2 proceed. These may include the increased traffic volume as well as the location of the revised intersection on Burrawong Drive.

3. Modification does not address changes to the existing approved development: The Statement of Environmental Effects (SoEE) submitted by Land Dynamics Australia (December 2016) does not describe the changes to the western half of the development, the low density residential component. In this regard, it is considered that further information is necessary with respect to the following:

- a. The number of low density residential lots which will remain. Using a combination of Figures 2 and 3 within the SoEE it is assumed that a total of 120 low density residential allotments will remain. Although this is based on Stage 11 remaining as 'medium density' and assumes that Modification 2 (refer above) is not granted.
- b. The impacts of the proposed changes on the road network, road hierarchy, general access and egress and traffic and intersection volumes.

In this regard, it is noted that the original Major Project application included a Traffic Report in support of the project (Colston Budd Hunt and Kafes Pty Ltd). The two paragraphs of text included within the submitted SoEE are considered insufficient to make a proper assessment of the proposed modifications. A formal traffic report addressing the above matters should therefore be submitted by the proponent.

- c. The impacts of the proposed modification with respect to the provision of service infrastructure (i.e. is sewer capacity available to service the increase in lot yield).
 - d. Reduction in the area of Public Park. No comment has been provided with respect to the proposed changes to the central park.
 - e. No plan is provided which details how the low density residential component and proposed Senior's Housing component will relate.
 - f. How do the proposed changes to staging impact the offsetting of the conservation area and the construction of shared services?
4. Bushfire: The bushfire hazard assessment submitted with the proposed modification (Building Certification and Environmental Services, December 2016) recommends that a 30m wide asset protection zone (APZ) be provided along the eastern property boundary. However, Appendix 4 of the bushfire assessment as well as the Overall Master Plan detail this 30m wide APZ as being upon adjoining Lot 40 DP819450 and Lots 34 and 35 in DP791916. No comment is made with respect to whether formal owners consent for this APZ has been submitted. Should no authority be available, it is considered that Lots 211-213 and 225-234 would not be developable in accordance with the bushfire hazard assessment submitted.

The proposed modification also brings the eastern portion of the site forward in the development staging sequence. However, the bushfire report does not describe interim bushfire prevention or management measures between stages or stemming from the large (golf) recreation area along the northern boundary.

5. No assessment of traffic has been undertaken with respect to the proposed modification: As mentioned above, the original Major Project application included a Traffic Report in support of the project (Colston Budd Hunt and Kafes Pty Ltd). The two paragraphs of text included within the submitted SoEE are considered insufficient to make a proper assessment of the proposed modifications implications with respect to traffic and road changes. A formal traffic report addressing the above matters should therefore be submitted by the proponent.
6. Stormwater modelling appears unrealistic: The music modelling appears somewhat unrealistic as it likely relies on a free draining quality basin judging by the reduction in flow and volumes detailed in the SoEE (90.6% reduction, page 45). Our experience is that the water table would need to be sufficiently higher to flood these basins. The stormwater quality modelling should therefore be reviewed by an independent consultant experienced in Music modelling.
7. Burrawong Drive is unformed and the road name should be different to that existing to avoid numbering confusion: To avoid confusion for future traffic accessing the proposed development it is considered that the name of the road, to be constructed, off the existing round-a-bout, should contain a different name to Burrawong Drive to avoid confusion with existing house numbering.
8. Incorrect Lot details provided on application form: The application form submitted with the modification refers to the application occurring over a Lot 1 DP1128633. This lot does not exist.
9. Incorrect owners details provided on application form: The owner's consent form submitted with the modification application includes an authority by Malbec South West Rocks for lodgement of an application over Lot 84 DP792945. This Lot is understood to be owned by Rimcorp Land Pty Ltd.

Overall, it is considered that the information submitted with the proposed modification is not sufficient to enable a full and proper assessment of a development of this scale. We would therefore request that the Department strongly consider refusing the proposed modification application based on the limited information provided.

We would also like to express our concern with the limited timeframe provided by the Department with respect to this submission. In this regard, the Department's notification letter, dated 1 February 2017, was not received until 14 February 2017, leaving a total of 6 days to review and respond.

The Departments letter also advises that Ms Amy Robertson is the relevant contact and provides a phone number that is no longer in use. The Departments website however, identifies Ms Jane Flanagan as the relevant contact whilst providing no direct phone contact details.

The map supplied by the Department also contains no property identification information or description of where it fits into the approved development. It is considered that the information supplied was not sufficient to make an adequate or informed assessment of the proposed modification.

If you have any questions in relation to this letter please do not hesitate to contact the undersigned on Phone (02) 6586 2555.

Yours sincerely
King & Campbell Pty Ltd

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Terrance Stafford

cc Client

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