

17<sup>th</sup> November 2011

The General Manager  
Willoughby Council  
PO BOX 57  
**CHATSWOOD NSW 2057**

Dear Sir,

**STATEMENT OF ENVIRONMENTAL EFFECTS  
MODIFICATION OF DEVELOPMENT CONSENT DA-2007/940(D)  
INCREASE IN CHILDCARE PLACES FROM 46 TO 58  
NO. 1 CAMBRIDGE LANE, CHATSWOOD**

**1.0 INTRODUCTION**

On 22<sup>nd</sup> May 2007 Willoughby Council granted development consent DA-2007/153(D) for the fit-out and use of the premises as a 40 place childcare centre. On 18<sup>th</sup> February 2008 Council granted development consent DA-2007/940(D) for an increase in childcare numbers from 40 to 46 and to extend hours of operation to 7:00am – 7:00pm.

We have been engaged to prepare an application to modify the latter development consent pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979 (“the Act”). In essence the application proposes an increase in child care places from 46 to 58 with the increase in numbers accommodated by the purchase of additional land as detailed on the accompanying plan and owners consent documentation.

The increase in child care places to 58 children will allow the childcare operator to meet a clear demand for child care places in this location with no physical changes required to the existing building to accommodate such increase. This document constitutes a statement of environmental effects prepared pursuant to the provisions of the Environmental Planning and Assessment Act 1979.

The modifications sought will not materially alter the three dimensional form and external appearance of the development as approved with the additional car parking demand appropriately accommodated by the six (6) existing drop off car parking spaces. To that extent Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved.

Accordingly the application is appropriately dealt with by way of Section 96(1A) of the Environmental Planning and Assessment Act 1979.

## **2.0 SITE LOCATION AND DESCRIPTION**

The existing childcare centre is located at the podium level of an existing multi storey mixed use development known as No. 1 Cambridge Lane Chatswood. The site is located on the northern fringe of the Chatswood CBD. The childcare centre is accessed from Cambridge Lane with six (6) x maximum ten (10) minute time limited drop of car parking spaces available immediately adjacent to the ground floor foyer. Two (2) additional staff car parking spaces are located within the basement car parking area.

## **3.0 MODIFICATIONS SOUGHT**

The application proposes an increase in child care places from 46 to 58 children to enable the childcare operator to meet a clear demand for child care places in this location with no physical changes required to the existing building to accommodate such increase. The augmented outdoor play area is depicted on the accompanying plan A-101D prepared by JDH Architects.

The existing toilet and car parking allocations will appropriately cater for the increased child numbers proposed.

## **4.0 STATUTORY PLANNING FRAMEWORK**

### **4.1 Section 96(1A) of the Environmental Planning and Assessment Act 1979**

Section 96(1A) of the Environmental Planning and Assessment Act 1979 ("EP&A Act") empowers Council to modify a development consent, if inter alia;

*"it is satisfied that the development to which the consent as modified relates is "substantially the same" development for which consent was originally granted and before that consent as originally granted was modified (if at all)".*

In answering the above threshold question as to whether the proposal represents "substantially the same" development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls.

In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 per Bignold J.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in *Vacik Pty Ltd v Penrith City Council* (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

*“Substantially when used in the Section means essentially or materially or having the same essence.”*

What the abovementioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the approved development for the use of the building as a child care centre remains, in its modified state, the use of the building for a child care centre with an additional 12 child care places representing a relatively minor increase in intensity of use.

The built form elements continue to relate to their surrounds in the same fashion, namely the modifications sought maintain the three dimensional form, setbacks and external appearance of the development as approved with the additional area for outdoor play not readily discernable in a streetscape context. Further, the previously approved external finish, drainage and landscape regimes are not altered as a consequence of the modification proposed with the development providing appropriately for car parking.

The Court in the authority of *Stavrides v Canada Bay City Council* [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was “substantially the same” as that originally. A number of those general principles are relevant to the subject application, namely:

- The proposed use does not change;
- The external building appearance, envelope and volume is identical to the original approval;
- There are only minor external changes which will not change the streetscape appearance of the development as approved; and
- The increase in outdoor play area and child numbers will not impose any additional amenity impacts on adjoining properties in terms of views, privacy, visual bulk or overshadowing.

On the basis of the above analysis we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 96(1A) of the Act.

#### **4.2 Sydney Regional Environmental Plan No. 5 – CBD (Chatswood Town Centre) as amended**

The subject property is zoned 2(d) pursuant to Sydney Regional Environmental Plan No. 5 – CBD (Chatswood Town Centre) as amended (“SREP 5”).

Child Care Centres are permissible in the zone with consent. Accordingly the modification sought to the approved child care centre is permissible in the zone with consent.

The three dimensional form and massing of the development is maintained with no changes to height or FSR. Accordingly Council can be satisfied that the development complies with the SREP 5 provisions.

#### **4.3 Draft Willoughby Local Environmental Plan 2009**

The property is proposed to be zoned R4 High Density Residential pursuant to Draft Willoughby Local Environmental Plan 2009 (“DWLEP 2009”).

Child care centres will be permissible in the zone with consent. Accordingly there is no statutory impediment to the granting of consent.

#### **4.4 Willoughby Development Control Plan**

The proposed increase in child care places has been assessed against the relevant provisions of Willoughby Development Control Plan in particular the Part G10 Child Care Services requirements and has been found to be consistent with such provisions. In particular we note the following:

- The three dimensional form and massing of the building is not compromised;
- The spatial relationship of the child care centre use to the adjoining and adjacent residential properties is not altered;
- The existing compliant access and accessibility arrangements are maintained;
- The eight (8) existing car parking spaces will provide appropriately for staff and drop off parking particularly given the time limited nature of the existing drop off car parking spaces, the existing operating hours which spreads peak drop off and collection times and the fact that a significant portion of children live within walking distance of the child care centre; and
- The location of the site within Chatswood CBD and proximity to a range of public transport options.

#### **4.5 Section 79C the Environmental Planning and Assessment Act 1979 (as amended)**

The proposal has been assessed having regard to the matters for consideration pursuant to S79C of the Act and to that extent Council can be satisfied of the following:

- The proposed modifications are permissible with consent with such works appropriately dealt with by way of Section 96(1A) of the Environmental Planning and Assessment Act 1979;
- The modification sought will not alter the three dimensional form and external appearance of the development as approved and as such will not give rise to any adverse environmental consequences in relation to views, solar access, privacy or drainage;

- The proposal will not give rise to any adverse environmental consequences however will meet a clear demand for additional child care places in this locality.
- The public interest is best served through the approval of the modifications sought under the circumstances.

## **5.0 CONCLUSION**

The application proposes an increase in child care places from 46 to 58 with the increase in numbers accommodated by the purchase of additional land as detailed on the accompanying plan and owners consent documentation.

The increase in child care places to 58 children will allow the childcare operator to meet a clear demand for child care places in this location with no physical changes required to the existing building to accommodate such increase. The modifications sought will not materially alter the three dimensional form and external appearance of the development as approved with the additional car parking demand appropriately accommodated by the six (6) existing drop off car parking spaces.

To that extent Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly the application is appropriately dealt with by way of Section 96(1A) of the Environmental Planning and Assessment Act 1979.

Having given due consideration to the relevant considerations pursuant to S.79C of the Environmental Planning & Assessment Act 1979 (as amended) it is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.



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