



northern
beaches
council

MEMORANDUM

DATE: 19 September 2023

TO: Northern Beaches Local Planning Panel (NBLPP)

CC: Peter Robinson, Executive Manager Development Assessment

FROM: Jordan Davies – Acting Manager of Development Assessment

SUBJECT: Item No. # 4.1 – DA2023/0466 – 45 Cabarita Road, Avalon Beach

TRIM REFERENCE: 2023/606120

Dear Panel,

The purpose of this memo is to advise the Panel that since the publication of the agenda for the NBLPP meeting on the 19 September 2023 there has been 13 unique submissions (i.e from one household) lodged regarding item 4.1. The submissions are addressed to the NBLPP Panel for consideration in determination of the DA. It is noted that the 8 out of the 13 submissions contain the same content.

Submissions have been received from:

1. Trappers Way Road Fund
2. Mary Morel – 51 Trappers Way*
3. Sarah Turnbull/Frederic Veniese – 31 Trapper Way
4. Simon Dibbs/Matilda Heppel – 42 Trappers Way*
5. Dominic Stone & Suzy McKenzie – 28 Trappers Way (57 Cabarita Road)
6. Eamonn and Diane Mullaney – 73 Trappers Way*
7. Matilda Heppel – 42 Trappers Way*
8. Rebekah Dorter and Paul Whittingham – 40 Trappers Way*
9. Emma Tonkin* - No address given
10. Geoff Hosking and Paula Hile – 38 Trappers Way
11. Mariah Flanders - 65 Trappers Way*
12. Davide Bini – 65 Trappers Way*
13. Craig & Sue Boaden – 43A Cabarita Road/34 Trappers Way*

*(Those marked with * contain the same content).*

The issues which have been raised in the submissions are summarised below for the Panel and Council has provided a response to each of the issues, to assist the Panel:

- **Renotification of amended plans and time to consider amended plans**

We note from the Northern Beaches Council (NBC) staff report to the Northern Beaches Local Planning Panel (NBLPP) that DA2023/0466 has had a number of amendments to the DA and a revised Plan, none of which were advised to residents/neighbours/submission authors. Residents have not had an adequate opportunity to examine and comment on the new documents and Plan, let alone to make submissions to the NBLPP, as the notice time re the NBLPP meeting has been very short ie 4 working days.

Comment: Page 10 of the agenda paper deals with the changes to the application and requirements for renotification in accordance with Council's Community Participation Plan. In short, the application was amended to **reduce** the proposed development and resulted in a lesser impact. As such, renotification of the application was not required and this is consistent with Council's Community Participation Plan.

- **Request to defer matter from the agenda**

For this reason residents urgently request that consideration of DA2023/0466 by the Panel be postponed to a future date so as to allow residents reasonable time to make submissions.

Comment: This is a matter for the Panel Chair to decide. As stated above, the amended plans resulted in a reduction to the proposal and as such re-notification was not required. Council considered all of the original submissions made against the application in assessing the amended plans.

- **Request for onsite inspection by the Panel to view Trappers Way Constraints and road pavement**

Due to the unusual nature of Trappers Way as a private Right of Way (ROW) and NBC staff's description of our request that construction access be via the official address ie 45 Cabarita Rd, as "unfeasible and unreasonable" (NBLPP 25 Sept Agenda item 4.1 p.13), residents request that the NBLPP hold an onsite inspection prior to their consideration of this DA so they can see for themselves how the road surface of Trappers Way has already been degraded by recent construction work, and that the road particularly adjacent to 33 Trappers Way is extremely narrow with a sharp turn and a significant Protected Tree (Spotted Gum). See 3 images attached (note – images will be attached with the submissions). It is difficult to imagine how large construction vehicles for the DA will navigate the pinch point between properties #46 and #31 (between the large sandstone shelf and the protected tree). The traffic congestion at this corner would create safety issues for residents and construction workers.

Comment: The request for an on-site meeting has been directed to the Panel Chair. The Panel conduct site inspections prior the public meeting in their own time. Any decision to conduct a further inspection/on-site meeting will be at the Panel Chair's discretion.

Condition 11 has been recommended to require a Construction Traffic Management Plan (CTMP) to be prepared for the development. Councils standard CTMP condition has been recently updated to include additional requirements for construction access via a Right of Carriageway (ROC), which includes Trappers Way. In response to the concerns raised in the objections, a further amendment to the CTMP condition is recommended to require an assessment to be carried out of the physical constraints of the ROC to determine the maximum size of vehicle that may access the site via the ROC during construction. See the below recommended condition at the end of this memo.

- **Impacts to Pittwater Spotted Gum along Trappers Way due to construction Vehicles**

Comment: The CTMP condition is recommended to be updated to address how impacts upon trees from construction vehicles will be managed during the construction phase. See below updated recommended condition.

- **Repair to Trappers Way Road Pavement as a result of construction.**

We are very concerned that, a Dilapidation Report notwithstanding, residents will be put to considerable additional expense due to damage caused by the planned construction. We note recent onsite discussions with Scott Phillips NBC CEO in relation to the road and that NBC has received a quote of \$350,000 (on behalf of residents) for residents to repair the current damage caused by recent major developments.

Comment: The CTMP condition requires a dilapidation report to be undertaken pre and post development for the right of way, which would include damage to the road pavement. The CTMP condition requires the proponent to identify any remediation actions taken, to rectify any damages that are a result of the development works. The condition requires the proponent to submit this as part of the occupation certificate.

Any existing rectification works required to Trappers way is not a matter for this development application.

- **Construction Parking on Trappers Way**

Please also note that, while parking for one construction-related vehicle on the building site is recommended in the staff report, Trappers Way Road Fund Inc. on behalf of residents will not permit any construction-related parking on Trappers Way.

Comment: The CTMP condition requires that “No materials or plant are to be located or parked in the private road/driveway, community title road or right of way”. It is recommended that the condition be updated to restrict the parking of construction vehicles within the ROC as well.

- **Liability for damage to road surface**

We will be holding NBC liable for any further damage to Trappers Way road surface as a result of its recommendation that the NBLPP approve construction from Trappers Way.

Comment: The CTMP condition appropriately deals with rectification of damages to a private right of way. Trappers Way is under private ownership and the development is being carried out by a private land owner. As such, Council is not held liable for any damage during construction. Council CTMP condition is drafted in such a way that requires the proponent to take responsibility for any damage to the right of way.

- **Privacy for 49 Cabarita Road/31 Trappers Way**

As direct neighbours of this property (at 49 Cabarita Road/31 Trappers Way) who commissioned Bill Tulloch to assess the DA on our behalf, we are pleased to note the modifications. However, the development poses ongoing issues for our privacy in relation to the south facing upper floor windows and balcony adjoining Bedroom 03 on the eastern elevation. It is requested the balcony be deleted and all south facing windows have a minimum sill height of 1.65m or obscure glass to address privacy.

Comment: It is understood that the windows of concern are on the upper level, south elevation servicing Bedroom 3 and Ensuite 2.

Ensuite 2 has an obscured glazed window and therefore does not give rise to any privacy impact.

The window to Bedroom 3 (W2 11) is a modest size and Council does not consider bedroom windows to result in unreasonable overlooking or privacy implications, as they are a lower occupancy room (as opposed to a living room, dining room or kitchen).

The balcony adjoining Bedroom 3 is a modest size and a privacy screen/solid wall has not been incorporated as this would reduce solar access to the adjoining site. The balcony is not of a size that is capable of entertaining a large group of people and is directly accessible off a bedroom, which is a lower occupancy room. The balcony is primarily orientated towards the rear boundary.

Therefore, Council is satisfied with the design in relation to privacy for the adjoining properties.

- **CTMP Condition does not protect damage to road pavement**

The new CTMP conditions, while a welcome step forward, do not protect the road from future damage due to builds, nor will they protect TW owners from having to pay the cost of any damage. The construction conditions do not provide for a bond to be paid to the Trappers Way Road Fund or to Council on our behalf. Nor do they, in the event of road damage caused by construction vehicles, oblige the owner of the build to pay for repairs.

Comment: Council is unable to require a bond to be placed over private land.

The CTMP condition requires a dilapidation report to be undertaken pre and post development for the right of way, which would include damage to the road pavement. The CTMP condition requires the proponent to identify any remediation actions taken, to rectify any damages that are a result of the development works. The condition requires the proponent to submit this as part of the occupation certificate.

Recommendation

The Panel note the submissions.

The following condition is recommended to be amended (as identified in the red text) in the assessment report, as follows:

Condition 11 – Construction Traffic Management Plan

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- a) The proposed phases of construction works on the site, and the expected duration of each construction phase
- b) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- c) Make provision for all construction materials to be stored on site, at all times
- d) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- e) The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.

- f) Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
- i. Evidence of the legal right **and terms** to use the access route or provide owners consent from the owners/strata/community association.
 - ii. Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - iii. **An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.**
 - iv. Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP,
 - v. No **construction vehicles**, materials or plant are to be located or parked in the private road/driveway, community title road or right of way
 - vi. How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
 - vii. **A Tree protection plan** prepared by an Arborist with minimum AQF Level 5 in arboriculture **demonstrating how trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.**
 - viii. A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets **(including trees)** or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
 - ix. A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - 1) Compare the post-construction report with the pre-construction report,
 - 2) Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - 3) Should any damage have occurred, identify remediation actions taken.
 - 4) Be submitted to Council with the Occupation Certificate.
- g) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- h) Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- i) Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- j) Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- k) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure

- l) Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- m) Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- n) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- o) Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- p) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- q) Proposed protection for Council and adjoining properties
- r) The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.