

17 January 2022

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Maitland City Council
PO Box 220
Maitland NSW 2320

Attention: Jessica Stockham

Dear Jessica,

Response to Request for Information
96 Belmore Road, Lorn
DA 2021/978:1

This correspondence has been prepared by SLR Consulting Pty Ltd (SLR) on behalf of Olivia Sharpe in response to the request for further information letter issued by Council on 15th December 2021 in relation to DA 2021/978:1 *Section 4.55(1A) Application to Delete Conditions 12 and 13.*

- 1. Proposed Modification** - *Provide evidence of why the development is considered to be substantially the same to that which was originally approved, in accordance with the requirements contained under Section 4.55 of the Environmental Planning and Assessment Act 1979. Given you are seeking to modify under Section 4.55(1A) for a modification you must provide adequate information on how the modification involves a minimal environmental impact and is substantially the same as the original development. Refer to <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1979-203#sec.4.55> for further information and what information is required to be provided under this section of the legislation.*

Response: The proposal for very minor alterations to the development already approved at the site is considered to have both a minimal environmental impact and is substantially the same as the originally approved development. An application under Section 4.55(1A) is therefore the appropriate approval path for the proposal.

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) is copied below:

(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.

Subsection (a) and (b) are considered further below:

(a) Minimal Environmental Impact

The proposal includes an additional path and gate from Belmore Street to the building. No other works are proposed under this application. The impact on the environment from this very minor inclusion is negligible. Due consideration has been given to the visual and heritage impact of a new path and gate as detailed in Item 2 of this RFI, where Heritage Architects EJE found no concerns from a heritage point of view in regards to the proposal's impact upon the Lorn Heritage Conservation Area and streetscape.

(b) substantially the same development as the development for which the consent was originally

The original consent at the site was granted on the 8th November 2021 for *Alterations to a Dwelling House and Secondary Dwelling (Attached)*. This modification application relates to the same lot and does not propose to change the approved land use or any aspect of the approved built form of the building, GFA, layout, vehicular access, parking etc. The proposed path and gate are considered minor alterations to the approved development at the site. Therefore, the development, as modified, would result in substantially the same development as that originally approved.

2. Statement of Environmental Effects (SOEE) and Original Application DA2021-978. *No additional information or updates has been given on the proposed changes under this modification in a Statement of Environmental Effects. The application must include additional information on how the application satisfies the relevant clauses under Part 5 of the Maitland Local Environmental Plan 2011, relevant clauses applicable to the development and the Maitland Development Control Plan 2011 (DCP) such as C4 'Lorn Heritage Conservation Area' and the Heritage Design Guidelines placed by Council on the title of the land.*

Response: The relevant matters for consideration in evaluation of a development application under S4.15 of the EP&A Act 1979 are detailed below:

Maitland LEP 2011

The site is zoned R1 General Residential under the LEP 2011. The proposal development is permissible within the zone and is consistent with the first two objectives of the zone (copied below). The proposal for a path and gate will enable the property to be used in a diverse manner meeting the housing needs of the community.

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Clause 5.4- Controls relating to miscellaneous permissible uses

The proposal will continue to comply with the floor area limits under this clause. No change to GFA proposed.

Clause 5.10- Heritage Conservation

The site is located within Lorn Heritage Conservation Area and consequently, due consideration must be given to the effect of the proposal on the significance of the conservation area (noting there are no adjoining heritage listed items). EJE Heritage Architects have prepared the enclosed letter which undertakes an assessment of the proposed works against the Heritage Architectural Design Guidelines, 88b Instrument controls pertaining to the land and Maitland DCP including Part E Special Precincts (Lorn Heritage Conservation Area).

In summary, the proposal is consistent with the objectives of Clause 5.10 by conserving the heritage significance of the Lorn heritage conservation area, including associated fabric, settings and view.

Further comment on DCP compliance and 88b Instrument compliance are provided below.

Clause 5.21 Flood Planning

N/A- The proposal will not impact the flood function and behaviour of the land.

Maitland Development Control Plan – Part E Special Precincts, E.3 Heritage Conservation Areas

As mentioned above, the site is located within the suburb of Lorn, which is identified as a heritage conservation area. Nothing proposed within this modification application contradicts the conservation policies of what to keep, what to encourage and what to avoid. In fact, there are no DCP controls related specifically to gates and paths. The DCP does 'encourage' the predominance of single residences per allotment, however this is not a mandatory requirement/control. Notwithstanding, the secondary dwelling is not the subject of the modification application, it has already been approved by Council in the parent consent.

Consistent with the DCP, the building height and setback remains unchanged to that approved; the roof form and pitch remain unchanged; and the garage remains behind the rear building line to Belmore Road and as a detached structure.

There are no relevant controls contained within any other chapters of the DCP including Part C Design Guidelines, C.4 Heritage Conservation.

Heritage Design Guidelines/ 88b Instrument

The positive covenant placed on the lot requires that a dwelling be erected that complies with the Architectural Design Guidelines (Revision E, prepared by EJE Heritage and dated January 2017). EJE Heritage have been engaged to provide comment on the modifications proposed. They found that the requirement for detached single storey dwelling/ single family residence are satisfied within the proposal as the dwelling's built form remains exactly the same. The second gate and path proposed are discreet and indirect and EJE Heritage believe "...they will not be prominent enough to be noticeable in the streetscape or confuse the legibility of the single built form. The inclusion of a second mailbox associated with the second gate is also considered to be suitably discreet." Refer to EJE Heritage letter attached.

Conclusion

The removal of Condition 12 and 13, limiting an additional gate, path and mailbox for the recently approved secondary dwelling, is supported by EJE Heritage based on their review of the proposal against the Architectural Design Guidelines, 88b Instrument and Maitland DCP. The gate, path and any mailbox is considered discreet and unlikely to impact on the Lorn Heritage Conservation Area and streetscape of Belmore Road.

The information provided herein addresses the items raised in the RFI and the application is considered to be suitable for Council to finalise their assessment. If any clarification is needed in relation to the proposal, please contact the undersigned on (02) 4940 0442.

Yours sincerely



KATE YOUNG
Principal Planner

Enclosures

- EJE Heritage Letter, 7th January 2022