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Wingecarribee Shire Council
PO Box 141
Moss Vale NSW 2577
Attention: Nancy Sample

Dear Nancy,

RE: Modification Application to Development Application 21/0952 – Lot 4 DP1077545 at 55 Burnhams Lane, Exeter

This Statement of Support has been prepared to support an application made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*, in relation to the abovementioned Development Application.

It satisfies the requirements of Clause 115 of the *Environmental Planning and Assessment Regulation 2000* in providing the appropriate information to enable Council to appropriately assess and determine the application.

The modification relates to Development Application 21/0952 that was issued by Council on 11 February 2021 for the purpose of semi enclosing an existing dressage arena on the subject site.

The modification application seeks to amend the approval so that the extent of the covered area is increased to better accommodate the needs of the users of the facility.

The modification application does not seek to change any other aspect of the development.

Approved Development Application

Development Application 21/0952 was initially approved by Council on 11 February 2021 for the specific purpose of:

Residential Alterations and Additions – Equine Facility (Covered, Semi Enclosed Dressage Arena)

The consent was granted with a suite of standard and specific conditions of consent.

This Statement of Support provides the appropriate consideration of the

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proposed modification against the relevant planning legislation to allow Council to be satisfied pursuant to s4.55(1A), that the development, as modified, will remain substantially the same development as approved.

With direct reference to the provisions of Clause 115 of the Regulations, the following information is provided:

(1) An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act must contain the following information:

(a) the name and address of the applicant,

Refer to application form

(b) a description of the development to be carried out under the consent (as previously modified),

The approval issued under Development Approval 21/0952 was to enable an existing dressage arena to be covered to enable all weather usage. The proposed modification to the consent does not contemplate any change to this use.

(c) the address, and formal particulars of title, of the land on which the development is to be carried out,

Refer to application form. The land is legally described as Lot 4 DP1077545 with an address of 55 Burnhams Lane, Exeter.

(d) a description of the proposed modification to the development consent,

The proposed modification is described in this Statement of Support.

(e) a statement that indicates either: (i) that the modification is merely intended to correct a minor error, misdescription or miscalculation,

The modification is not intended to correct an error, misdescription or miscalculation.

Or (ii) that the modification is intended to have some other effect, as specified in the statement,

The modification is intended to have the effect of providing an extended area of coverage for the dressage arena. It is not intended to increase the number of users of the arena, or the times that the arena would be used or the purposes for which it will be used.

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(f) a description of the expected impacts of the modification,

It is not expected that the proposed modification will result in any impacts different to or greater than the impacts already accepted by Council in approving the original development application, or to the way that the site operates.

If the submitted extension plans are supported as requested, there will be no consequential impacts on any other facet of the development as approved, with no consequential changes to any conditions of development consent.

(g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,

The development, as to be modified, will remain substantially the same as that originally approved. The approval issued was for the covering and semi enclosure of an existing dressage arena and that is not changed by the proposed modification.

(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),

Refer to application form

- (i) a statement as to whether the application is being made to the Court (under section 96) or to the consent authority (under section 96AA), and, if the consent authority so requires, must be in the form approved by that authority.*

Not relevant to this application.

Description of the Modifications being sought

Council is requested to consider modifying the consent as issued, by approving the submitted plans prepared by Central Steel Build.

These plans are in fact the original plans that were submitted with the Development Application when it was lodged in December 2020. During the assessment process, Council requested that the size of the roofed area be reduced to 1408 square metres, which covered only the arena itself. This did not

provide for any additional covered area under which horses could be saddled, harnessed and prepared before entering the arena.

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The applicant submitted amended plans and consequently the approval was granted subject to those plans. Note: Condition 1 of the consent and its reference to the Floor Plans and Elevations from Central Steel Build that are marked as Revision A.

The plans that support this Modification Application are those prepared by Central Steel build that were originally proposed. They provide for a total of 1760 square metres of covered area, being 22 metres wide and 80 metres in length. The difference between the area approved by Council (22m x 64m) and the area sought by the applicant (22m x 80m), is the difference between having no covered area external to the arena and having some covered area adjacent to the arena that is fundamental to the proper functioning of the arena in inclement weather.

Category of Modification

The proposed modification to the existing consent is considered to be within the ambit of Section 4.55 of the *Environmental Planning and Assessment Act 1979* (the Act).

The modification application has been lodged pursuant to Section 4.55(1A) of the Act, which states:

*(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.

Council is at liberty to accept that the original development approval can be modified by extending the area to be covered, as shown on the submitted plans, without it resulting in a development that is substantially different from that originally approved.

It will remain as a covered dressage arena upon a rural property that will operate within the existing parameters of the consent as it was originally issued, without any difference to the impact of the development upon the environment or upon any adjoining property.

Assessment of Proposed Modification

The proposed modification to the issued consent is considered to be fair and reasonable, suitable to the circumstances of the case and can be supported.

As noted, the additional roof area being requested is a direct response to the needs of the users of the dressage arena. In order to ensure the optimum outcome, the additional covered area is required. If the submitted plans are supported as requested, there will be no consequential impacts on any other facet of the development as approved, with no consequential changes to any conditions of development consent.

It is understood that the Council's original insistence upon reducing the covered area was directly related to 'compliance' with the provisions of the Rural Lands Development Control Plan, as they relate to the maximum site coverage of structures and specifically Part B Section B6.5.2 Additional Controls for Equine Facilities (covered).

The DCP seeks to place a limit of 1400sqm of covered area for a dressage arena. Given that the internal dimensions of an arena are 20mx60m = 1200sqm, this gives very little scope for the ancillary spaces required for saddling, harnessing and preparation and still be within the 1400sm limit.

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In terms of compatibility with the aesthetic of the site, the slightly enlarged covered area for the arena will not alter its visibility within the rural landscape. It will remain a simple built form that will not be highly prominent. It is set back approximately 750 metres from Werai Road, which is the only through traffic route that has any view of the site.

In support of the proposed modification to DA21/0952, it is important to note that the requested minor variation to the DCP should not be seen as unusual, unprecedented or unwarranted.

Equine activity within the Shire is increasing and this should be seen as an overall positive for the Shire. However, in encouraging equine activity, Council needs to have in place the appropriate planning regime and then administer that regime with sound judgement.

In terms of similar developments to DA21/0952, Council should have regard to the following equine facilities which are all providing a range of facilities of similar scale to that being proposed on the subject site, with many of them being as large, or larger, than the covered arena being proposed. These facilities include:

- Sutton Farm Equestrian Centre, Illawarra Hwy, Sutton Forest
- Shibumi Equestrian Centre, Bundanoon
- Karizmah Performance Horses Greenhills Rd, Werai
- Centennial Vineyards, Centennial Rd, Bowral.
- Waratah Thoroughbreds, Headlam Rd, Moss Vale
- Deon Stokes Equestrian, Illawarra Hwy, Moss Vale
- Wallaby Hill Equestrian Complex, Wallaby Hill Rd, Robertson
- Dorothea Lungershausen Ringwood Lane, Exeter
- Parbery Performance horses, Kareela Rd, Penrose
- Robali Stud, Woodlands Rd, Woodlands
- Trainor Equestrian Illawarra Hwy, Avoca
- Owlswood Sproules Lane, Glenquarry
- Silver Springs, Sheepwash Road, Avoca
- B2B Thoroughbreds, Old South Road, Mittagong

The above list is not exhaustive, but it does provide a good cross section of equine sites within the Shire that operate without adverse impact whilst having built form larger than the arbitrary numerical control of the DCP.

Whilst potential adverse visual impact is a legitimate concern for Council to manage, an arbitrary numerical control is only a small part of the management

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tool box. In this case, the form and scale of the covered arena is appropriate and the reduction in the optimum size of the covered area that has been imposed through the development consent as issued, has negative impacts upon the effectiveness of the facility, whereas the marginally larger structure would not change the overall impact of the structure on the landscape. In other words a penalty imposed upon the applicant for no environmental or public benefit.

Conclusion

The requested modification to the approved Development Approval 21/0952 is not considered to be significant and is well within the ambit of S4.55(1A) of the Act.

There are no adverse impacts arising from the proposed modification. Approval of the modification would give rise to no consequential amendments to any other condition of the original development consent.

The desire of Council to restrict the area of a dressage arena that can be 'covered', has its genesis in avoiding adverse visual impacts on the rural character of a locality or impacts upon significant rural views or vistas.

There are no adverse outcomes from this proposal regardless of whether the covered area is a fully compliant 1400sqm or a slightly increased 1760sqm covered area.

The provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* specifically refer to the role of Development Control Plans and the way Council's must administer them in the development assessment process. Section 4.15(3A)(b) states:

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development,

Council therefore is obliged to be flexible in its assessment of this development proposal in respect of the covered area of the dressage arena.

This is particularly so when a development does not offend the objectives of the DCP and no adverse impacts can be substantiated.

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Further, there is a clear pattern of approvals and development that are outside of the particular DCP guideline. This would indicate Council's willingness to balance their deliberations and make decisions based not simply upon numerical compliance.

Council therefore needs to be supportive of this proposed modification rather than object purely on the basis of a variance to an arbitrary numerical value in the DCP.

Thank you and I would be pleased to discuss any aspect of this submission with you at your earliest convenience if necessary.

Yours Faithfully,

Scott Lee

18 April 2021