

21st September 2018

The General Manager
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Dear Sir,

**Statement of Environmental Effects
Modification of Development Consent DA2017/1136
Alterations and additions to the existing shop top housing
development
209 – 211 Ocean Street, Narrabeen**

1.0 Introduction

On 21st March 2018 development consent DA2017/1136 was granted for alterations and additions to the existing shop top housing development located on the subject property involving the construction of an additional residential apartment over the existing 2 storey western portion of the building.

This document forms a component of an application seeking the modification of the consent pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act).

Specifically, the application seeks minor window and internal layout changes, the extension of the existing lift to provide disabled access to the existing roof terrace, the reinstatement of the previously demolished communal WC with a disabled WC and the provision of a roof over the lift and external stairs to provide weather protection to these access points and new apartment foyer at the level below. The air conditioning condensers are also relocated in accordance with condition 2 of the development consent with a screen provided to obscure them when viewed from the adjacent terrace area.

The modifications sought will not compromise the streetscape/ urban design and residential amenity outcomes achieved through approval of the original application with this submission demonstrating that the modifications involve minimal environmental impact and that the development as modified represents substantially the same development as that originally approved.

Subject to Council undertaking the appropriate statutory notifications the application is appropriately dealt with by way of Section 4.55(2) of the Act. The modifications have been found to be acceptable when assessed against the heads of consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended and in our opinion, are appropriate for the granting of consent.

2.0 Detail of modifications sought

The proposed modifications are depicted and shown highlighted on the following plans prepared by Quattro Architecture:

S4.55-A-000	COVER SHEET
S4.55-A-070	SHADOW DIAGRAMS
S4.55-A-080	PHOTOMONTAGE
S4.55-A-090	EXISTING PLANS
S4.55-A-102	LEVEL 2 UNIT PLAN
S4.55-A-103	ROOF TERRACE
S4.55-A-104	ROOF PLAN
S4.55-A-200	ELEVATIONS
S4.55-A-201	ELEVATIONS

Specifically, the modifications propose the following:

Level 2 Unit Plan

- Minor changes to the internal layout and window size/ locations; and
- Minor reconfiguration of shared lobby/ stairs.

Level 3 Roof Plan

- The extension of the existing lift to provide disabled access to the existing roof terrace;
- The reinstatement of the previously demolished communal WC with a disabled WC and the provision of a roof over the lift and external stairs to provide weather protection to these access points and new apartment foyer at the level below; and
- The air conditioning condensers are relocated in accordance with condition 2 of the development consent with a screen provided to obscure them when viewed from the adjacent terrace area.

Conditions of Consent

Condition 1

This condition will need to be modified to reference the amended plans.

Condition 2

This condition can be deleted as the modified plans show the relocation of the condensers as required.

The previously approved drainage and colour/ material regimes are unaltered.

3.0 Statutory Planning Considerations

3.1 Section 4.55(2) of the Environmental Planning and Assessment Act 1979

Section 4.55(2) of the Act provides that:

- (2) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:*
 - (a) *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*

.....

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 remains, in its modified state, a shop top housing development which will continue to spatially relate to its surrounds and adjoining development in the same fashion as originally approved. The previously approved streetscape, privacy, solar access and general amenity outcomes afforded by the original application are not unreasonably altered.

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 approved general building form, footprint, setbacks, floor space, car parking and drainage circumstances are not altered.
- The proposal maintains a complimentary and compatible streetscape presentation.
- The modifications maintain the previously approved residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk and overshadowing.
- The modifications have resulted from a desire to refine the detailing of the application and address roof top access and communal WC facilities which were altered/ demolished as a component of the original application (lift needed to be replaced to service new apartment and communal WC was demolished and not replaced).

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 4.55(2) of the Act.

3.2 Warringah Local Environmental Plan 2011

Height of Buildings

Pursuant to clause 4.3 Warringah Local Environmental Plan 2011 (WLEP) the height of any building on the land shall not exceed 8.5 metres above existing ground level. The stated objectives of the clause 4.3 height of buildings standard is as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The dictionary to the LEP defines building height to mean:

building height (or ***height of building***) *means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

From an analysis of the architectural plans and available survey information we confirm that the extended lift overrun and exhaust duct will have a maximum height of 11.76 metres with the stair and lift foyer roof element 150mm below this maximum height. This represents a non-compliance of 3.26 metres or 38% as depicted in Figure 1 over page.

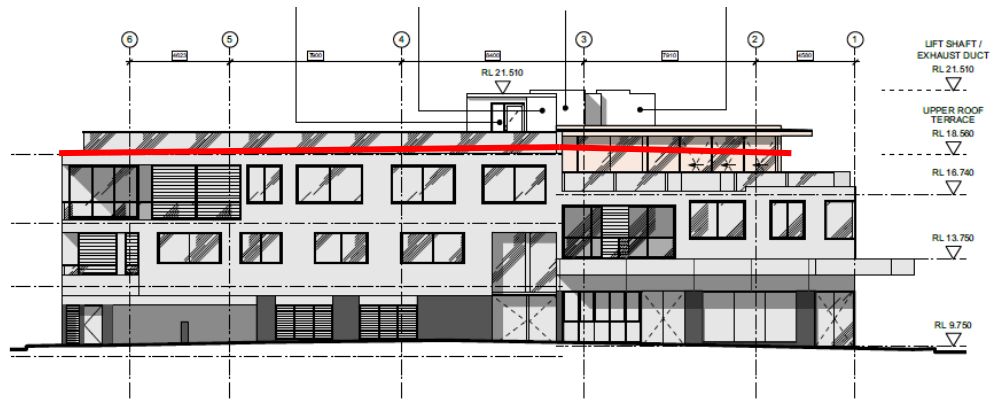


Figure 1 – Building height non-compliance diagram

We note that the clause 4.6 WLEP variation mechanism does not apply to an application made pursuant to Section 4.55(2) of the Act and accordingly any variation must be assessed on merit having regard to the objectives of the standard. In this regard, having assessed the proposed building height breach against the applicable objectives we have formed the considered opinion that strict compliance is both unreasonable and unnecessary under the circumstances namely:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: Development within the sites visual catchment and within the 8.5m height precinct is mixed in nature with shop top housing, residential flat buildings, multi dwelling housing and single residential dwelling developments. The height of development also varies significantly defining the visual character of the area and site context. In this regard, we note that there are many pre-existing and recently approved and constructed examples of 3 storey residential development within the 8.5 metre height zone and within immediate proximity of the site.

In this regard, we have formed the considered opinion that the height, bulk and scale of the lift extension and surrounding roof structure are entirely consistent with the height and scale of surrounding and nearby development. As indicated in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 development does not have to be the same height to be considered compatible.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed lift extension and surrounding roof structure by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context.

In forming such opinion, we note that the structures are set well away from the edges of the building where they will not be readily discernible as viewed from outside the site and where they will not give rise to any adverse shadowing impacts. We also rely on the montages prepared in support of the application is reproduced in Figures 2 and 3 below.



Figure 2 – View looking south from Ocean Street



Figure 3 – View looking east from Malcolm Street

In this regard it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly this objective is satisfied.

- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site we have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to any unacceptable visual, views, privacy or solar access impacts.

This objective is clearly not defeated.

- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment: The non-compliant building height will not adversely impact on the scenic quality of Warringah's coastal and bush environments. This objective is not defeated.

- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comment: The non-compliant building height will not be readily discernible as viewed from the street or any public area.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant building height elements, offensive, jarring or unsympathetic in a streetscape context.

We have formed the considered opinion that the proposal will maintain appropriate amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. The proposal will however reinstate communal WC facilities, provide disabled access to the pre-existing roof terrace and weather protection to the roof level access and amenities. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly strict compliance is unreasonable and unnecessary under the circumstances.

Council can be satisfied that the proposed modifications satisfy the objectives of the Act, the objectives of the height of buildings development standard and to that extent strict compliance is both unreasonable and unnecessary under the circumstances.

3.3 Warringah Development Control Plan 2011

The following controls are applicable to the development as proposed pursuant to WDCP:

Standard	Control	Proposed
PART B – BUILT FORM CONTROLS		
Wall Height	7.2m Wall height control applies to sites where it has an 8.5m building height control under the LEP	The Level 4 foyer exceeds the 7.2m wall height control however its central location on the site will ensure that the structure is not readily discernible in a streetscape context. We rely on the justification provided at section 3.2 of this report in terms of overall building height.
Front Setback	Nil front setback	All proposed building works are setback well beyond the established/ approved setbacks and comply with the numerical setback provisions.
Side boundary setback	Merit assessment	All proposed building works are setback well beyond the established/ approved setbacks with such setbacks acceptable on merit.
PART C – SITING FACTORS		
Traffic, Access and Safety	1.5 spaces per 3 bedroom dwelling.	No change
Stormwater	Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon,	No change

	<p>lake and waterway or the like.</p> <p>The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management Policy.</p>	
PART D - DESIGN		
Access to sunlight	<p>Development should avoid unreasonable overshadowing any public open space.</p> <p>At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.</p>	The shadow diagrams prepared by Quattro Architecture show that all additional shadowing fall onto the subject site.
Building Bulk	<p>To encourage good design and innovative architecture to improve the urban environment.</p> <p>To minimise the visual impact of</p>	<p>The proposed lift, WC and roof extensions have been designed to minimise the bulk and scale by providing generous setbacks from the front and side boundaries.</p> <p>We rely on the justification provided at section 3.2 of this report in terms of overall building height.</p>

	development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.	
Site Facilities	To provide for the logical placement of facilities on site that will result in minimal impacts for all users, particularly residents, and surrounding neighbours.	The air conditioning condensers are also relocated in accordance with condition 2 of the development consent with a screen provided to obscure them when viewed from the adjacent terrace area. These structures will not be discernible from the street.

4.0 Conclusion

The application seeks minor window and internal layout changes, the extension of the existing lift to provide disabled access to the existing roof terrace, the reinstatement of the previously demolished communal WC with a disabled WC and the provision of a roof over the lift and external stairs to provide weather protection to these access points and new apartment foyer at the level below. The air conditioning condensers are also relocated in accordance with condition 2 of the development consent with a screen provided to obscure them when viewed from the adjacent terrace area.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant building height elements, offensive, jarring or unsympathetic in a streetscape context. We have formed the considered opinion that the proposal will maintain appropriate amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. The proposal will however reinstate communal WC facilities, provide disabled access to the pre-existing roof terrace and weather protection to the roof level access and amenities. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly strict compliance is unreasonable and unnecessary under the circumstances.

The modifications sought will not compromise the streetscape/ urban design and residential amenity outcomes achieved through approval of the original application with this submission demonstrating that the development as modified represents substantially the same development as that originally approved.

Subject to Council undertaking the appropriate statutory notifications the application is appropriately dealt with by way of Section 4.55(2) of the Act. The modifications have been found to be acceptable when assessed against the heads of consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended and in our opinion, are appropriate for the granting of consent.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

BOSTON BLYTH FLEMING PTY LIMITED

A handwritten signature in black ink, appearing to read 'Greg Boston', with a stylized flourish at the end.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

Director