

7<sup>th</sup> February 2024

The CEO  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Dear Sir,

**Statement of Environmental Effects**  
**Modification of Development Consent DA2021/1341**  
**Demolition works and the construction of multi dwelling housing**  
**3 Brookvale Avenue, Brookvale**

**1.0 Introduction**

On 22<sup>nd</sup> June 2023 the above development consent was granted by Council for the demolition of existing site structures and the construction of multi dwelling housing on the subject property.

We have been engaged to prepare an application to modify the consent pursuant to section 4.55(1A) of the Environmental Planning and Assessment Act 1979 Act (the Act). Specifically, the modifications propose a general refinement in the internal layout of the dwellings and in the location and detailing of fenestration. The modifications also include the provision of a mechanical carpark exhaust concrete plenum and riser to ventilate the basement in accordance with the BCA. The requirements of condition 17 of the development consent have also been incorporated.

With the exception of the subterranean exhaust plenum and riser the modifications are contained wholly within the approved building envelope such that the 3 dimensional form, setbacks and landscape outcomes as approved are not compromised. Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing.

To that extent Council can be satisfied that the proposed modifications are of minimal environmental impact with the modified development substantially the same as originally approved. Accordingly, the application is appropriately dealt with by way of section 4.55(1A) of the Act.

## **2.0 Detail of Modifications Sought**

### **Architectural modifications**

The proposed modifications are shown clouded on plans A03D – A05D, A07E, A08E, A09E and A12B prepared by Barry Rush and Associates. Specifically, the modifications propose a general refinement in the internal layout of the dwellings and in the and location and detailing of fenestration. The modifications also include the provision of a mechanical carpark exhaust concrete plenum and riser to ventilate the basement in accordance with the BCA.

The previously approved stormwater drainage and landscape regimes are not compromised as consequence of the modifications sought.

### **Modification to conditions**

The application also seeks the modification of the following conditions:

#### Condition 1 - Approved Plans and Supporting Documentation

This condition is to be amended to reflect the modified plans.

#### Condition 17 - Amendments to the approved plans

This condition can be deleted as the requirements have been incorporated into the modified plans.

## **3.0 Section 4.55(1A) of the Environmental Planning and Assessment Act 1979**

Section 4.55(1A) of the Act provides that:

- (1) *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, and*
    - (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.*
- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In answering the above threshold question, we have formed the considered opinion that the modifications sought are of minimal environmental impact given that:

- With the exception of the subterranean exhaust plenum and riser the modifications are contained wholly within the approved building envelope such that the 3 dimensional form, setbacks and landscape outcomes as approved are not compromised,
- The originally approved residential amenity outcomes in terms of solar access, privacy, acoustics and view sharing are not compromised,
- No changes are proposed to the approved off-street carparking, stormwater, landscaping or waste management regimes, and
- The design quality of the development is not compromised.

In answering the 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 previously approved urban design, built form and landscape outcomes are not altered with the residential amenity outcomes afforded through approval of the original application not compromised.

In this regard, the approved development remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion to that originally approved.

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 application remains a proposal involving the construction of multi dwelling housing with no change to the approved density,
- The previously approved overall building heights, setbacks and footprint are maintained, and
- The modifications maintain the previously approved environmental outcomes in terms of residential amenity, landscaping, drainage and streetscape presentation.

On the basis of the above analysis, we regard the proposed application as being of minimal environmental impact and “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and appropriately dealt with by way of Section 4.55(1A) of the Act.

#### **4.0 Warringah Local Environmental Plan 2011**

##### **Zoning and permissibility**

The proposed development remains permissible with consent in the zone. Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the modifications sought.

##### **Height of Buildings**

Pursuant to clause 4.3 of WLEP development on the land must not exceed a building height of 8.5 metres. The objectives of this control are 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.*

**Building height** is defined as follows:

*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*

We confirm that the previously approved building heights are not altered as a consequence of the modifications sought.

##### **Earthworks**

Pursuant to clause 6.2(3) WLEP 2011, before granting development consent for earthworks, the consent authority must consider the following matters -

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,
- (c) the quality of the fill or the soil to be excavated, or both,
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

The modifications satisfy the above provisions and to that extent we rely on the geotechnical report approved in support of the original application.

Council can be satisfied that the clause 6.2 WLEP 2011 provisions have been achieved.

#### **4.2.3 Development on sloping land**

Pursuant to Clause 6.4 WLEP 2011 the subject site is identified on the Landslip Risk Map. In this regard, the original application was accompanied by a geotechnical site investigation report prepared by JK Geotechnics. We rely on this previously submitted geotechnical report given the minor excavation associated with the ventilation plenum and shaft.

Council can be satisfied that the clause 6.4 WLEP 2011 provisions have been achieved.

### **5.0 Warringah Development Control Plan 2011**

Having assessed the modified development against the applicable provision of WDCP we note the following:

- The siting, scale, form and massing of the development is not altered with the modified proposal maintaining the previously approved building height, setbacks and spatial relationship with adjoining development,
- No changes are proposed to the residential component of the development or the approved off-street carparking or waste management arrangements. The previously approved stormwater drainage and landscape regimes are not compromised as consequence of the modifications sought, and
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development through approval of the original application in relation to views, solar access and privacy.

- The ventilation plenum does not compromise the approved landscape regime given the soil depths reinstated above this structure.

## **7.0 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended**

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979(as amended):

The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.

The modified development continues to respond positively to the applicable statutory planning regime with the urban design, streetscape, residential amenity, landscape and drainage outcomes afforded through approval of the original application not compromised.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

### *Context and Setting*

i) *What is the relationship to the region and local context on terms of:*

- *the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

The modifications sought are contained predominantly within the approved building envelope, or not discernible as viewed from outside the site, with the 3 dimensional form, streetscape appearance and landscape outcomes as approved not compromised as consequence of the modifications sought.

ii) *What are the potential impacts on adjacent properties in terms of:*

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

The approved development will remain, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion as originally approved in terms of view sharing, height, boundary setbacks, privacy and landscape outcomes.

### *Access, transport and traffic*

*Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:*

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

No change.

### *Public domain*

There are no public domain changes.

### *Economic impact in the locality*

The proposed development will provide short term employment opportunities during construction.

### *Site design and internal design*

i) *Is the development design sensitive to environmental conditions and site attributes including:*

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

The modifications are contained wholly within the approved building envelope such that the 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought.

Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing.

ii) *How would the development affect the health and safety of the occupants in terms of:*



- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The development, as modified, will comply with the provisions of the Building Code of Australia. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health, safety and accessibility.

### *Construction*

i) *What would be the impacts of construction activities in terms of:*

- *the environmental planning issues listed above?*
- *site safety?*

Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

### The suitability of the site for the development.

*Does the proposal fit in the locality?*

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any insurmountable development constraints. The site is well located with regards to utility services and public transport. There will be no excessive levels of transport demand created.

*Are the site attributes conducive to development?*

The site has no special physical or engineering constraints and is suitable for the proposed development.

### Any submissions received in accordance with this Act or the regulations.

It is envisaged that any submissions made in relation to the proposed development will be appropriately assessed by Council.

The public interest.

It is considered that the development will result in a significant addition of good design to the locality. The development is consistent with the adopted planning regime.

## **8.0 Conclusion**

The modifications propose a general refinement in the internal layout of the dwellings and in the location and detailing of fenestration. The modifications also include the provision of a mechanical carpark exhaust concrete plenum and riser to ventilate the basement in accordance with the BCA. The requirements of condition 17 of the development consent have also been incorporated.

With the exception of the subterranean exhaust plenum and riser the modifications are contained wholly within the approved building envelope such that the 3 dimensional form, setbacks and landscape outcomes as approved are not compromised. Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes including privacy, solar access and view sharing.

To that extent Council can be satisfied that the proposed modifications are of minimal environmental impact with the modified development substantially the same as originally approved. Accordingly, the application is appropriately dealt with by way of section 4.55(1A) of the Act.

Having given due consideration to the relevant considerations pursuant to s4.15(1) of the Act it is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

Yours sincerely

**BOSTON BLYTH FLEMING PTY LIMITED**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**