

3<sup>rd</sup> November 2021

Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Dear Sir,

**Statement of Environmental Effects**  
**Modification of Development Consent DA2020/1732**  
**Demolition and construction of a new dwelling house and swimming pool**  
**1127 Barrenjoey Road, Palm Beach**

**1.0 Introduction**

On 22<sup>nd</sup> March 2021 development consent DA2020/1732 was granted for demolition works and the construction of a new dwelling house and swimming pool on the subject allotment.

This Statement of Environmental Effects (SoEE) has been prepared in support of an application seeking a reduction in the extent of approved basement level excavation and a minor refinement to the internal layout of the cabana pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the application proposes:

- The deletion of the majority of the approved basement level,
- A reduction in depth of the lift (to stop at landing RL+1.15),
- A reduction in depth of the car stacker (to RL -0.15 AHD),
- A reduction in depth of the basement store (to RL +0.30 AHD), and
- Minor internal layout change to the pool cabana to accommodate a change room and pool plant room.

This submission is also accompanied by the following addendum reports prepared in support of the modifications sought:

- Addendum arborist report prepared by Hugh the Arborist,
- Addendum Geotechnical Risk Assessment prepared by Geo-Logix, and
- Structural Statement prepared by Vison Structures.

The approved dwelling house is otherwise unaltered with the approved streetscape/ foreshore scenic protection, residential amenity, stormwater disposal, flooding and landscape regimes not compromised. As such, Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of s4.55(1A) of the Act.

## **2.0 Detail of Modifications Sought**

The modifications seek a reduction in the extent of approved excavation and a minor refinement to the internal layout of the cabana as depicted on the following architectural plans, Revision A, dated 21/10/21 prepared by Tregale and Associates:

- DA-02 Rev A - Proposed Lower Ground / Basement Floor Plan
- DA-03 Rev A - Proposed Ground Floor Plan (Entry Level)
- DA-11 Rev A - Section / Elevation 5 – East Elevation (Facing Pool Pavilion)
- DA-12 Rev A - Section / Elevation 6 – West Elevation (Facing Front Pavilion)
- DA-15 Rev A - Diagrammatic Section C-C

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- A reduction in depth of the basement store (to RL +0.30 AHD), and
- Minor internal layout change to the pool cabana to accommodate a change room and pool plant room.

Condition 1 of the consent will need to be modified to reference the modified plans and documentation.

## **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 the modifications reduce environmental impact through a reduction in required excavation. The approved dwelling house is otherwise unaltered with the approved streetscape/ foreshore scenic protection, residential amenity, stormwater disposal, flooding and landscape regimes not compromised. The modifications sought are, in our opinion, of minimal environmental impact.

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 building height, setbacks and envelope are not altered with the residential amenity outcomes in terms of solar access, privacy and view sharing 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 a dwelling house;
- The previously approved building heights, setbacks and footprint are not significantly altered; and
- The modifications maintain the previously approved environmental outcomes in terms of residential amenity and streetscape/ foreshore 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 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 of the Act:

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

##### **Pittwater Local Environmental Plan 2014**

###### Height of Buildings

Pursuant to the height of buildings map, the site has a maximum building height limit of 8.5 metres. The approved building height is not altered as a consequence of the modifications sought with all modified works sitting comfortably below the height standard.

###### Earthworks

Although excavation has been significantly reduced, we rely on the accompanying addendum Geotechnical Risk Assessment prepared by Geo-Logix in support of the modifications sought.

###### Flood planning

The previously approved floor levels and flood planning outcomes are maintained.

##### **Pittwater 21 Development Control Plan**

We confirm that the modifications sought to the approved basement arrangement will not compromise the developments performance when assessed against the applicable Pittwater 21 Development Control Plan provisions relating to built form, landscaping, car parking, residential amenity, flood planning, foreshore scenic protection and streetscape outcomes.

Such outcome provides for enhanced environmental planning outcomes for this particular site and facilitates the orderly and economic use and development of the land.

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 will not alter the 3-dimensional built form circumstance of the development and will not compromise the residential amenity or streetscape/foreshore scenic protection outcomes achieved through approval of the original scheme.

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?*

A above.

*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 to approved quantum of off-street carparking.

*Public domain*

No change.

*Economic impact in the locality*

No change to approved outcome.

*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 will not materially alter the 3-dimensional built form circumstance and residential amenity outcomes achieved through approval of the original scheme.

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 proposed modifications will be able comply with the provisions of the Building Code of Australia without difficulty. 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 site is suitable for the development.

*Are the site attributes conducive to development?*

The site 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.

The development is consistent with the adopted planning regime. The modifications will not materially alter the 3-dimensional built form circumstance or residential amenity outcomes achieved through approval of the original scheme. Approval would not be antipathetic to the public interest.

## **5.0 Conclusion**

This application proposes a reduction in the extent of approved basement level excavation and a minor refinement to the internal layout of the cabana.

The approved dwelling house is otherwise unaltered with the approved streetscape/ foreshore scenic protection, residential amenity, stormwater disposal, flooding and landscape regimes not compromised. As such, Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of s4.55(1A) of the Act.

Having given due consideration to the relevant considerations pursuant to section 4.15 of the Act it is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of a modified consent.

Yours sincerely

**BOSTON BLYTH FLEMING PTY LTD**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**