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22 April 2022

The General Manager  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

Dear Sir/Madam,

**DEVELOPMENT CONSENT No. 2021/1766**  
**18 ALEXANDER STREET, COLLAROY**

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### **Introduction**

This Statement of Environmental Effects (SEE) has been prepared to accompany an Application to amend Development Consent No. 2021/1766 pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

The subject site comprises two (2) adjoining allotments formally identified as Lots 8 and 9 in Deposited Plan 6984. The site is commonly known as No. 18 Alexander Street, Collaroy.

The site is located on the southern side of Alexander Street, approximately 145 metres to the west of Pittwater Road. The site comprises two (2) adjoining allotments with a combined area of 1,156.117m<sup>2</sup>. The consolidated site is rectangular in shape with a frontage of 24.38 metres to Alexander Street.

The site is currently occupied by a 2 – 3 storey dwelling house of brick construction with a tile roof, and a detached single storey weatherboard building with a metal roof.

### **Approved Development**

On 17 March 2022, Council granted Development Consent No. 2021/1766 for “*Demolition works and construction of a housing development comprising five (5) self-contained apartments including basement car parking pursuant to SEPP (Housing for Seniors or People with a Disability) 2004*”.

The approved development provides 5 x 3-bedroom self-contained apartments. The individual apartments include private open space accessed directly to/from the main living rooms.

Off-street car parking was approved for 10 vehicles within a basement level, accessed via a combined entry/exit driveway extending to/from Alexander Street.

### **Proposed Amendments**

The proposed amendments comprise the addition of a swimming/plunge pool within the private open space of Apartments 1 and 5.

The swimming/plunge pool for Apartment 1 is located within the private open space to the east of Bedroom 1. The swimming/plunge pool incorporates a pool fence and perimeter decking, with new landscaping provided between the sandstone wall extending along the side of the decking and the side boundary.

The swimming/plunge pool for Apartment 5 is located within the private open space to the north of the main living areas. The swimming/plunge pool incorporates a pool fence and perimeter decking, with new landscaping provided between the decking and the perimeter of the private open space.

The pool equipment for both swimming/plunge pools will be accommodated with acoustic enclosures located below the proposed perimeter decking.

### **Legislative Context**

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* specifies that:

- (1A) *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 consent if:*
- (a) *it is satisfied that the proposed modification is of minimal environmental impact,*
  - (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which 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.*

Further, Section 4.55(3) specifies that in determining an application of a consent, the consent authority shall take into consideration such of the matters referred to in Section 4.15 as are of relevance to the development the subject of the application.

### **Substantially the Same Development**

In *Tipalea Watson Pty Ltd v Ku-ring-gai Council NSWLEC 253*, it was held that substantially the same development maintains the “essential characteristics” of the approved development. Further, in *Moto Projects (No. 2) Pty Ltd v North Sydney Council* [1991] 106 LGERA 298, Bignold J said (at 309 [56]):

*The requisite factual finding requires a comparison between the development as currently approved and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is essentially or materially the same as the currently approved development. The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where the comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being prepared in their proper contexts.*

The reference of Bignold J to “essentially” and “materially” the same is derived 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 1979 (the predecessor to Section 96) that “*Substantially when used in the Section means essentially or materially or having the same essence*”.

In terms of both a qualitative and quantitative assessment, the proposed amendments are minor in nature, and do not materially change the physical form of the approved development, its external appearance, or its physical relationship with surrounding land.

Further, no changes are proposed to the number of apartment or bedrooms, the number of off-street car parking spaces, or the pedestrian or vehicular access arrangements.

Finally, no changes are proposed to the form of the approved building in terms of gross floor area, maximum building height or boundary setbacks.

In the circumstances, the amended development maintains the essential features and characteristics of the approved development, and the use, operation and function of the site remain substantially unchanged. On that basis, the approved development is not being radically altered, and the amended development remains substantially the same as the approved development.

## **Consultation and Notification**

The approved development was formally exhibited in accordance with the relevant legislative requirements, and the consent authority remains responsible for any formal exhibition of the proposed amendments.

Irrespective, the single submission (objection) by Council received in relation to the approved development related to building height, the content of the flood study, and the details of the proposed landscaping.

In that regard, the proposed amendments do not alter the maximum height of the building, or have any implications in relation to the flood study. Further, the Landscape Plans have been updated to incorporate the proposed swimming/plunge pools, with the landscaped setting of the site and building substantially maintained and/or improved.

## **Section 4.55 Assessment**

The heads of consideration incorporated in Section 4.55 of the *Environmental Planning and Assessment Act 1979* comprise:

- any environmental planning instrument;
- any proposed environmental planning instrument that is or has been the subject of public consultation and that has been notified to the consent authority;
- any development control plan;
- any planning agreement;
- any matters prescribed by the Regulation;
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality;
- the suitability of the site for the development;
- any submissions made in accordance with the Act or the Regulations; and
- the public interest.

## Environmental Planning Instrument

The approved development was granted pursuant to the provisions of State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability) 2004. The SEPP has subsequently been repealed and replaced by SEPP (Housing) 2021, however the new SEPP does not apply to the approved development (or the proposed amendment) pursuant to Clause 2(1)(d) of Schedule 7.

Again, no changes are proposed to the number of apartment or bedrooms, the number of off-street car parking spaces, or the pedestrian or vehicular access arrangements.

Further, no changes are proposed to the form of the approved building in terms of gross floor area, maximum building height or boundary setbacks.

In the circumstances, the relevant provisions of the SEPP comprise the controls relating to landscaped area and deep soil zones incorporated in Clause 50. In that regard, the proposed amendments cannot be refused in relation to landscaped area or deep soil zones if *“a minimum of 30% of the area of the site is to be landscaped”* and/or if *“there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site”*.

The landscaped area and deep soil zone controls are not expressed as a minimum, and Clause 50 does not impose any limitations on the grounds on which a consent authority may grant development consent. That is, there is no minimum landscaped area or deep soil zone controls.

Irrespective, the approved development incorporates a total landscaped area of 43.3% of the site area, of which 25.8% is deep soil landscaping.

The definition of *“landscaped area”* incorporated in the SEPP includes *“swimming pools or open-air recreation facilities”*. In the circumstances, the proposed amendments do not alter the approved landscaped area which substantially exceeds the *“must not refuse”* provision incorporated in Clause 50 of the SEPP.

The proposed swimming/plunge pool for Apartment 5 does not alter the approved *“deep soil zone”*, and the proposed swimming/plunge pool for Apartment 1 will marginally reduce the approved *“deep soil zone”* by approximately 25m<sup>2</sup>.

Irrespective, the development will maintain a *“deep soil zone”* of approximately 23.6% of the site area, which substantially exceeds the *“must not refuse”* provision in Clause 50, circumstances in which the proposed amendments cannot be refused on that basis.

The SEPP does not incorporate any further provisions of relevance to the proposed amendments.

The site is zoned R2 - Low Density Residential pursuant to the Warringah LEP 2011, and the approved development (and proposed amendments) is permissible with the consent of Council pursuant to Clause 15 of the SEPP.

Clause 4.3 of the LEP specifies a maximum building height of 8.5 metres. The approved development complies with the building height control in Clause 50 of the SEPP, the SEPP prevails to the extent of the inconsistency, and no changes are proposed to the maximum building height.

The LEP does not incorporate any further provisions of relevance to the proposed amendments.

### Proposed Environmental Planning Instruments

There are no proposed environmental planning instruments of specific relevance to the proposed amendments.

### Development Control Plans

The Warringah DCP 2011 is generally intended to supplement the provisions of the Warringah LEP 2011, and provide more detailed objectives and controls to guide future development.

Part D16 of the DCP provides objectives and requirements relating to *Swimming Pools and Spa Pools*.

The objectives and requirements of Part D16 are expressed as follows:

#### **Objectives**

- *To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*
- *To encourage innovative design solutions to improve the urban environment.*

#### **Requirements**

1. *Pools are not to be located in the front building setback.*
2. *Where there are 2 frontages, swimming pools and spas are not to be situated in the primary street frontage.*
3. *Swimming pools and spas are to be setback from any trees. Australian Standard AS4970-2009 Protection of trees on development sites is to be used to determine an appropriate setback.*

The proposed swimming/plunge pools are not located in the front building setback, the site does not have two (2) street frontages, and the proposed swimming/plunge pools will have no impact on any existing trees.

In the circumstances, the proposed swimming/plunge pools will preserve the natural environment, streetscape and residential amenity, and represent innovative design solutions to improve the urban environment.

The DCP does not incorporate any further controls of specific relevance to the proposed amendments.

### Impacts of the Development

The proposed amendments are minor in nature, and do not materially change the physical form of the approved development, its external appearance, or its physical relationship with surrounding land.

Further, no changes are proposed to the number of apartment or bedrooms, the number of off-street car parking spaces, or the pedestrian or vehicular access arrangements.

Finally, no changes are proposed to the form of the approved building in terms of gross floor area, building height or boundary setbacks.

In the circumstances, the amended development maintains the essential features and characteristics of the approved development, and the use, operation and function of the site remain substantially unchanged.

### **Conclusion**

I trust this submission is satisfactory for your purposes, however should you require any further information or clarification please do not hesitate to contact the writer.

Yours Sincerely,



James Lovell  
Director  
James Lovell and Associates Pty Ltd