



Ph: (02) 9986 3362 Fax: (02) 9986 3364

Suite 1, 9 Narabang Way, Belrose 2085

PO Box 716, Turramurra 2074

Email: james@jameslovell.com.au

Web: www.jameslovell.com.au

19 September 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

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 1,156.117m². The consolidated site is rectangular in shape with a frontage of 24.38 metres to Alexander Street.

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*".

On 2 August and 17 August 2022, the Development Consent was amended pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*. The approved amendments include a series of adjustments to the floor plans at the ground, first and

second floor levels, and the addition of swimming/plunge pools within the private open space of Apartments 1 and 5.

The approved development (as amended) 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 are identified on the Architectural Plans (Revision B) prepared by *Walsh Architects*, dated 5 September 2022.

The proposed amendments comprise:

Basement Level

- internal adjustments and reallocation of the car parking spaces, including a reduction of one (1) parking space.

Ground Floor Level

- internal adjustments to the storage space to provide four (4) storage areas to reflect the reduction in the number of apartments from five (5) to four (4);
- minor reduction in the size of Bedroom 1 of Unit 1; and
- adjustments to the shape of the planter bed to the west of Bedroom 3 of Unit 1.

First Floor Level

- consolidation of Units 3 and 4 to create a single apartment (Unit 3);
- reconfiguration of the entry and floor plates of Units 2 and 3, and the consolidation of a portion of the breezeway into the habitable floor space;
- increased setback to the front boundary to Unit 2 and a corresponding increase in the size of the associated private open space;
- increased setbacks to the side and rear boundaries to Unit 3;
- adjustments to the landscaping and private open space to reflect the adjustments to the floor plates; and
- replacement of the privacy screen on the western side of the common stairwell with a solid wall.

Second Floor Level

- reconfiguration of the adjustable louvres to the south of Unit 4, and deletion of the pebbled roof to the west of Unit 4 to reflect the adjustments to the floor plate below.

Further, the elevations and sections have been adjusted to reflect the amendments to the floor plans

The proposed amendments reduce the number of apartments from five (5) to four (4), and reduce the number of off-street car parking spaces from ten (10) to nine (9).

Finally, the proposed amendments reduce the gross floor area of the approved development by 33.6m² from 620.5m² to 586.9m², and reduce the landscaped area by 17.5m² from 490.7m² to 473.2m².

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 a qualitative assessment, the proposed amendments are relatively 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.

In terms of a quantitative assessment, the proposed amendments reduce the number of apartments from five (5) to four (4), representing a change of 20%, and reduce the number of off-street car parking spaces from ten (10) to nine (9), representing a change of 10%.

Further, the proposed amendments the proposed amendments reduce the gross floor area of the approved development by 33.6m² from 620.5m² to 586.9m², representing a change of 5.4%, and reduce the landscaped area by 17.5m² from 490.7m² to 473.2m², representing a change of 3.5%.

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 amendments, 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.

The proposed amendments are relatively 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.

The relevant provisions of the SEPP comprise the controls relating to gross floor area, landscaped area/deep soil zones, and parking incorporated in Clause 50.

In that regard, the proposed amendments cannot be refused in relation to density and scale "*if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less*".

The FSR control is 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 maximum FSR control.

In that regard, the proposed amendments reduce the gross floor area of the approved development by 33.6m², providing an FSR of 0.51:1.

Further, 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.

In that regard, the proposed amendments reduce the landscaped area by 17.5m², providing a total landscaped area of 40.9% of the site area, of which 25.2% is deep soil landscaping.

Finally, the proposed amendments cannot be refused in relation to parking if at least the following is provided *"0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider"*.

The parking control is 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 parking control.

In that regard, the amended development provides a total of 12 bedrooms, and nine (9) off-street car parking spaces, representing more than 0.5 spaces for each bedroom.

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.

Section 3.42 of the *Environmental Planning and Assessment Act 1979* specifies that the provisions of a DCP *"are not statutory requirements"*.

Further, Section 4.15(3A)(b) specifies that the consent authority *"is to be flexible in applying"* the provisions of a DCP, and *"allow reasonable alternative solutions that achieve the objectives of those standards for dealing with that aspect of the development"*.

The proposed amendments are relatively 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.

The proposed amendments do not alter the approved building height, increase the boundary setbacks, and reduce the gross floor area. Further, the amended development complies with the landscaped area/deep soil zone and parking controls incorporated in the SEPP.

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

Impacts of the Development

The proposed amendments are relatively 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.

The proposed amendments do not alter the approved building height, increase the boundary setbacks, and reduce the gross floor area. Further, the amended development complies with the landscaped area/deep soil zone and parking controls incorporated in the SEPP.

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