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16 May 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 1,156.117m^2. 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 relatively minor adjustments to the floor plans at the ground, first and second floor levels as follows:

Ground Floor

- infill of the void space to the east of Bedroom 1 and the ensuite of Unit 1 and internal reconfiguration of the ensuite and walk-in-robe.

First Floor

- infill of the void space to the east of Bedroom 1 and the ensuite of Unit 2 and internal reconfiguration of the ensuite and walk-in-robe;
- realignment of the southern wall of the living room of Units 3 and 4;
- realignment of the western wall of Bedroom 1 and the ensuite of Unit 3 and internal reconfiguration of the bedroom, ensuite and walk-in-robe; and
- realignment of the eastern wall of Bedroom 1 of Unit 4 and internal reconfiguration of the bedroom, ensuite and walk-in-robe.

Second Floor

- introduction of a pebble roof treatment over the realigned southern wall of Units 3 and 4 below; and
- replacement of the straight window with a curved window in the north-eastern corner of the living room of Unit 5.

The proposed amendments increase the gross floor area of the approved development (based on the definition of *"gross floor area"* incorporated in the repealed SEPP) by approximately 35.2m^2, from 583.6m^2 to 618.8m^2.

Further, the proposed amendments reduce the landscaped area of the approved development by approximately 31.9m^2, from 502m^2 to 470.1m^2.

Finally, the proposed amendments do not alter the number of approved apartments or bedrooms, and no changes are proposed to the approved of-street car parking provision or vehicular and pedestrian access arrangements.

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 qualitive assessment, the proposed amendments are relatively minor in nature, and will not materially change the physical form of 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 increase the gross floor area of the approved development by approximately 35.2m^2, from 583.6m^2 to 618.8m^2, representing a change of less than 6.1%.

Further, the proposed amendments reduce the landscaped area of the approved development by approximately 31.9m^2, from 502m^2 to 470.1m^2, representing a change of less than 6.4%.

Finally, the proposed amendments do not alter the number of approved apartments or bedrooms, and no changes are proposed to the approved of-street car parking provision or vehicular and pedestrian access arrangements.

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.

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 do not alter the number of apartment or bedrooms, the number of off-street car parking spaces, or the pedestrian or vehicular access arrangements. Further, there are some relatively minor adjustments to the approved setbacks to the eastern, western and southern boundaries, however the proposed amendments do not reduce the setbacks to less than the minimum approved setbacks.

In the circumstances, the relevant provisions of the SEPP comprise the controls relating to floor space ratio (FSR), landscaped area and deep soil zones incorporated in Clause 50. In that regard, the FSR, landscaped area and deep soil zones are expressed as *"must not refuse"* provisions.

Irrespective, the FSR, landscaped area and deep soil zone controls are not expressed as maximum or minimum provisions, 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, and no minimum landscaped area or deep soil zone controls.

Floor Space Ratio

Clause 50(b) of the SEPP specifies that a consent authority must not refuse consent to a DA 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 approved development provides a *"gross floor area"* of approximately 583.6m^2, representing an FSR of 0.504:1. The proposed amendments increase the gross floor area by approximately 35.2m^2, representing an FSR of 0.53:1.

The definition of *"gross floor area"* included in the repealed SEPP was/is inconsistent with the definition of *"gross floor area"* incorporated in the new SEPP and the *Standard Instrument*. The main difference is the repealed SEPP measures *"gross floor area"* from the external face of the enclosing walls, whereas the new SEPP and the *Standard Instrument* measure *"gross floor area"* from the internal face of the enclosing walls.

The repealed SEPP continues to apply to the approved development, and the proposed amendments increase the gross floor area by approximately 35.2m^2, representing less than 6.1% of the approved gross floor area.

The FSR of the amended development (based on the definition of *"gross floor area"* in the new SEPP and the *Standard Instrument*) is approximately 578.6m^2, representing an FSR of 0.5:1 which complies with the *"must not refuse"* provisions of both the repealed and new SEPP's.

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

Landscaped Area

Clause 50(c) of the SEPP specifies that a consent authority must not refuse consent to a DA in relation to *"landscaped area: if a minimum of 30% of the area of the site is to be landscaped"*.

The approved development provides a landscaped area of approximately 502m^2, representing 43.4% of the site area.

The proposed amendments reduce the landscaped area of the approved development by approximately 31.9m^2, from 502m^2 to 470.1m^2. Accordingly, the amended development provides a landscaped area of approximately 40.6% of the site area which satisfies the *"must not refuse"* provisions set out in Clause 50(c) of the SEPP.

Deep Soil Zone

Clause 50(d) of the SEPP specifies that a consent authority must not refuse consent to a DA in relation to *"deep soil zones: 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 approved development provides a deep soil zone of approximately 298.3m^2, representing 25.8% of the site area.

The proposed amendments occupy portions of the site not previously included as deep soil zones, circumstances in which the proposed amendments do not alter the approved deep soil zone. Accordingly, the amended development maintains a deep soil zone of 25.8% of the site area which satisfies the *"must not refuse"* provisions set out in Clause 50(d) of the SEPP.

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.

The relevant provisions of the DCP are limited to the objectives and controls relating to the side boundary envelope, and the side and rear boundary setbacks.

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"*.

Part B3 of the DCP specifies a side boundary envelope determined by projecting planes at 45 degrees from a height of 4 metres along the side boundaries.

The approved development complies with the side boundary envelope control, with the minor exception of the outer (eastern) edge of Unit 5. The proposed amendments do not alter the approved alignment of the eastern wall of Unit 5, circumstances in which there are no new or additional variations to the side boundary envelope control.

Part B5 of the DCP specifies a minimum side boundary setback of 0.9 metres. The proposed amendments marginally reduce the setbacks to the eastern boundary adjacent to Bedroom 1 and the ensuite of Units 1 and 2, and Bedroom 1 of Unit 4, and the setbacks to the western boundary adjacent to Bedroom 1 and the ensuite of Unit 3.

In all instances, the side boundary setbacks remain substantially in excess of 0.9 metres. Further, the proposed amendments do not reduce the setbacks to less than the minimum approved setbacks.

Finally, Part B5 of the DCP specifies a minimum rear boundary setback of 6.0 metres. The proposed amendments include realignment of the southern wall of the living room of Units 3 and 4.

The proposed amendments maintain a rear boundary setback of in excess of 6.0 metres, and the proposed amendments do not reduce the setbacks to less than the minimum approved setbacks.

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.

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.

The amended development complies with the *"must not refuse"* provisions of the SEPP in relation to FSR (based on the definition of *"gross floor area"* in the new SEPP and the *Standard Instrument*), landscaped area and deep soil zones.

The proposed amendments do not alter the extent of compliance with the side boundary envelope control, and the amended development continues to comply with the side and rear boundary setback controls.

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