

16<sup>th</sup> August 2018

The General Manager  
Northern Beaches Council  
PO Box 882  
Mona Vale NSW 1660

Dear Sir,

**Statement of Environmental Effects  
Modification of Land and Environment Court Issued Consent  
Proceedings No 10083 of 2016  
Boston Blyth Fleming ats Northern Beaches Council  
Proposed Residential Development  
Lot 1, DP 5055, No. 8 Forest Road, Warriewood**

**1.0 Introduction**

On 3<sup>rd</sup> May 2017, the Land and Environment Court of NSW (the Court) upheld an appeal and granted deferred commencement consent to the above development involving the construction of a residential development incorporating 81 dwellings and associated civil works and landscaping.

The consent has been subsequently modified to change the approved titling arrangement and to enable the staging of the approved development works.

We have again been engaged to prepare an application pursuant to Section 4.56 of the Act seeking the modification of the consent involving the deletion of the approved loft floor levels associated with Townhouses 1 – 14 and minor modifications to the first-floor level including changes to the western façade of the street facing bedrooms and the extension of the adjacent balconies across the entire width of the townhouses. adjacent balconies. A pitched metal roof with integrated skylights extends over the first floor of the townhouses. The strata plans will be modified accordingly.

As the proposed modifications reduce the height, bulk and scale of the townhouses, maintain the approved front, side and rear boundary setbacks, building footprints, car parking, drainage and landscaped area outcomes, 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 Section 4.56 of the Environmental Planning and Assessment Act 1979 which enables Council as the consent authority to modify a Court issued consent.

## 2.0 Detail of Modifications Sought

### Architectural Modifications

As previously indicated, the application proposes the deletion of the approved loft floor levels associated with Townhouses 1 – 14 and minor modifications to the first-floor level including changes to the western façade of the street facing bedrooms and the extension of the adjacent balconies across the entire width of the townhouses. adjacent balconies. A pitched metal roof with integrated skylights extends over the first floor of the townhouses.

The modifications are depicted on the following amended plans prepared by Drew Dickson Architects:

DRAWING LIST			
DWG No	SCALE	TITLE	REV No
A-000	NTS	COVER SHEET & DRAWING LIST	06
A-001	1:500	SITE PLAN AND DEVELOPMENT SUMMARY	06
A-099.1	1:200	BASEMENT CAR PARKING - EAST	07
A-100.1	1:200	GROUND FLOOR PLAN - EAST	07
A-101.1	1:200	FIRST FLOOR PLAN - EAST	07
A-199.1	1:200	ROOF PLAN - EAST	06
A-203	1:200	ELEVATIONS - TOWNHOUSES	05
A-210.1	1:500	BOUNDARY ELEVATIONS - EAST & WEST	04
A-210.2	1:500	BOUNDARY ELEVATIONS - NORTH & SOUTH	04
A-301	1:200	SECTIONS - TOWNHOUSES	05
A-500	1:500	SHADOW DIAGRAMS	05
A-510	1:500	SOLAR ACCESS ANALYSIS	06
A-520	1:500	NATURAL VENTILATION ANALYSIS	06
A-540	1:500	GROSS FLOOR AREAS ANALYSIS	05

AREA SCHEDULE - NETT INTERNAL AREA					
TOWNHOUSE	UNIT NO	BEDS	CAR SPACE NO	NETT INTERNAL AREA (M <sup>2</sup> )	PRIVATE OPEN SPACE (M <sup>2</sup> )
	UNIT 01	3	2	202.1	106.8
	UNIT 02	3	2	159.2	56.3
	UNIT 03	3	2	159.2	50.8
	UNIT 04	3	2	159.2	50.8
	UNIT 05	3	2	159.2	93.5
	UNIT 06	3	2	159.2	99.7
	UNIT 07	3	2	159.2	89.1
	UNIT 08	3	2	159.2	89.1
	UNIT 09	3	2	159.2	99.7
	UNIT 10	3	2	159.2	99.7
	UNIT 11	3	2	159.2	99.7
	UNIT 12	3	2	159.2	89.1
	UNIT 13	3	2	159.2	59.1
	UNIT 14	3	2	186.0	150.8
<b>TOTAL</b>			28	2298.5	1234.2

The strata plans will also be modified as depicted on the accompanying draft plan of strata subdivision (Stage 1) prepared by LTS Lockley Registered Surveyors.

## Condition Modifications

The application seeks the modification of the following conditions:

Condition A1(a) - This condition is to be modified to reflect the modified plans as outlined above.

Condition A1(j) - This condition is to be modified to refer to the Stage 1 strata plan the subject of this application.

### 3.0 Section 4.56 of the Environmental Planning and Assessment Act 1979

Section 4.56 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 Court and subject to and in accordance with the regulations, modify the development consent if:*
  - (a) *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*
  - (b) *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*
  - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, 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.*

*(1A) 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 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 proposed modifications reduce the height, bulk and scale of the townhouses, maintain the approved front, side and rear boundary setbacks, building footprints, car parking, drainage and landscaped area outcomes. We note that the residential amenity outcomes to adjoining development are either maintained or enhanced through the reduction in the height of the townhouses and removal of potential overlooking from the approved loft floor space.

In this regard, the approved development remains, in its modified state, a development which will relate to its surrounds and adjoining development in an enhanced fashion to that originally approved in terms of building height and maintain outcomes associated with privacy, solar access, spatial separation, landscaping and drainage.

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 proposed use does not change;
- The previously approved above ground built form outcome is reduced whilst the approved landscape and drainage regimes are maintained; and
- The modifications maintain or enhance the previously approved residential amenity and environmental outcomes.

On the basis of the above analysis we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.56 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(1) of the Act.

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

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

The developments permissibility when assessed against the provisions of PLEP 2014 are not compromised as a consequence of the modifications sought.

The deletion of the approved loft floor space results in a 2 metre reduction in the approved building height such that the town houses will sit comfortably below the 10.5 meter height standard.

The application does not otherwise involve any change to the previously approved above ground built form circumstance with no associated changes to the approved flood planning, biodiversity, geotechnical, essential services or bushfire management outcomes for the development.

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

As previously indicated the proposed modifications reduce the height, bulk and scale of the townhouses, maintain the approved front, side and rear boundary setbacks, building footprints, car parking, drainage and landscaped area outcomes. We note that the residential amenity outcomes to adjoining development are either maintained or enhanced through the reduction in the height of the townhouses and removal of potential overlooking from the approved loft floor space.

The application does not otherwise involve any change to the previously approved above ground built form circumstance with no associated changes to the approved flood planning, biodiversity, geotechnical, essential services or bushfire management outcomes for the development.

The approved developments performance when assessed against the relevant provisions of P21DCP are not compromised.

## **5.0 Conclusion**

Council can be satisfied that the approved developments performance when assessed against the relevant statutory planning considerations is not compromised.

This submission demonstrates that the modifications sought will enhance the approved streetscape outcomes with residential amenity outcomes to adjoining development either maintained or enhanced through the reduction in the height of the townhouses and removal of potential overlooking from the approved loft floor space. The proposed modifications will not give rise to any environmental impacts.

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 Section 4.56 of the Act which enables Council as the consent authority to modify a Court issued consent.

Yours sincerely

**BOSTON BLYTH FLEMING PTY LTD**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**