

22 December 2020

General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

**Re: 60-62 Beaconsfield Street and 7-13 Queens Parade, Newport
Section 4.55(2) modification of Development Consent DA2019/1280
Statement of Modifications and Environmental Effects**

Introduction

This Statement of Modifications and Environmental Effects relates to a proposal to modify Development Consent DA2019/1280 under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*.

Development Consent DA2019/1280 was issued on 23 April 2020 for “*Demolition works and construction of a multi unit housing development with associated carparking and landscaping*”.

The application seeks approval for the following modifications:

1. Addition of a bedroom window to Townhouses 1, 2, 3, 9(A), 10(A), 11, 16(A) and 17(A) and addition of one window to the walk-in-robe in Townhouse 8.
2. Provision of light well and ventilation louvres to Townhouse 11 garage.
3. Replacement of bay window and bath with a window in Townhouse 11.
4. Provision of solar panel roofing material on approved rooftop pergolas.
5. Addition of basement pump room.
6. Stair from basement car park straightened.
7. Pedestrian gate to Townhouse 15(A) on Beaconsfield Street relocated.
8. Enclosure of approved services areas adjacent to driveway and pedestrian access on Beaconsfield Street.
9. External stair 2 from basement garage deleted.
10. Wall to Townhouse 11 extended.
11. Planter on roof over driveway to Queens Parade reduced.
12. Roof over eastern pedestrian entry to garage deleted.
13. Provide 1.5m wide footpaths to Beaconsfield Street and Queens Parade.

To effect these changes, it is necessary to add the following condition to the Development Consent:

Symons Goodyer Pty Ltd
Town planning and
development consultants

Mobile: 0413 361 483

PO Box 673
Balgowlah NSW 2093

info@symonsgoodyer.com.au

www.symonsgoodyer.com.au

1A - Modification of Consent - Approved Plans and supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans – Endorsed with Council's Stamp		
Drawing No.	Dated	Prepared By
10708_DA003 Issue K (Site Plan / Roof Plan)	14.12.2020	nettletontribe
10708_DA004 Issue M (Beaconsfield St Ground Level Plan)	14.12.2020	nettletontribe
0708_DA005 Issue M (Beaconsfield Level 1 Plan & Queens Parade Basement Level Plan)	14.12.2020	nettletontribe
10708_DA006 Issue L (Beaconsfield Level 2 Plan & Queens Parade Ground Level Plan)	14.12.2020	nettletontribe
10708_DA007 Issue J (Beaconsfield Roof Plan & Queens Parade Level 1 Plan)	14.12.2020	nettletontribe
10708_DA020 Issue H (Elevations – Sheet 1)	14.12.2020	nettletontribe
10708_DA021 Issue G (Elevations – Sheet 2)	14.12.2020	Nettletontribe
10708_DA030 Issue J (Sections)	14.12.2020	nettletontribe
10708_DA062 Issue C (Western Boundary Detail)	14.12.2020	nettletontribe
10708_DA075 Issue E (Landscape Area Plan)	08.12.2020	nettletontribe

Reports / Documentation – All recommendations and requirements contained within:		
Report No.	Dated	Prepared By
BASIX Certificate (1054289M_02)	18.12.2020	Eco Certificates Pty Ltd
NATHERS Certificate (0005532180)	18.12.2020	Eco Certificates Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

It is also necessary to modify Condition 12(1) and (6) to replace the words “2.5 metres” with “1.5 metres”.

Requirements of Section 4.55(2)

Section 4.55 of the *Environmental Planning and Assessment Act 1979* relevantly provides:

(2) Other modifications

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 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*

[Comment: The proposal remains substantially the same, (ie: demolition works and construction of a multi unit housing development with associated carparking and landscaping) when applying the principles as summarised by the Land and Environment Court's planning principle in *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3)* [2015] NSWLEC 75, paragraph 173. The modifications do not change an element of the development that is essential to its characterisation or assessment.]

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

[Comment: Not relevant.]

- (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*

[Comment: Council's Community Participation Plan requires notification of the proposal.]

- (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.*

[Comment: Council will consider any submissions received as a result of the notification of the proposal.]

Subsections (1) and (1A) do not apply to such a modification.

- (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.*

[Comment: See discussion below.]

- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

[Comment: Noted.]

1. Addition of bedroom windows and window to walk-in-robe

The proposal includes the addition of a bedroom window to Townhouses 1, 2, 3, 9(A), 10(A), 11, 16(A) and 17(A) and a window to the walk-in-robe of Townhouse 8.

These windows will provide additional light, natural ventilation and amenity to the bedrooms and walk-in-robe. By providing natural daylight and ventilation they will reduce the need for artificial light and air conditioning, consistent with the principles of environmentally sustainable development.

The windows are in bedrooms and a walk-in-robe, which have low levels of daytime habitable use and will not result in unreasonable overlooking or a loss of privacy. Privacy within the bedrooms and walk-in-robe can be managed through the installation of binds or curtains which can be opened or closed depending upon the wishes of the occupant.

2. Addition of lightwell and ventilation louvre to townhouse 11 garage

The proposal includes the addition of a lightwell and ventilation louvre on the western side of the garage for townhouse 11. This will improve the amenity of townhouse 11 by providing natural light and ventilation to the area between the vehicle parking spaces and the entry door into the townhouse.

The lightwell and ventilation louvre are adjacent to a blank wall on the neighbouring property and have no negative amenity impacts.

3. Replacement of bathroom bay-window and bath with a window

The proposal includes the replacement of a bathroom bay-window and outdoor bath with a window in Townhouse 11.

This element of the proposal will result in an increase in the side boundary setback of this part of the building from 2.0m to 3.0m.

The change will not result in a significant change to the amenity of the townhouse which will retain full bathroom facilities for the use of the future residents.

4. Provision of solar panel roofing material on rooftop pergolas

The approved development includes rooftop pergolas over the private open space for each townhouse.

In a bid to further enhance the environmental sustainability credentials of the development it is proposed to provide solar panel roofing material to the rooftop pergolas. This will provide additional clean energy to the development in addition to the approved rooftop solar panels.

The roofing of the pergolas will improve the amenity and usability of the private open spaces for the townhouses by providing sun and adverse weather protection and assisting in enabling the rooftop terraces to be utilised throughout the year for the benefit of the future residents.

The solar panel roofing material is proposed on the approved pergola structures which, due to their location on the roof of the building and set back from the boundaries and street frontages, are difficult to perceive. Consequently, the proposal has no impact with regards to visual amenity, character of the area, streetscape and solar access to neighbouring properties.

It is noted that some of the rooftop pergolas exceed the 8.5m building height control that applies to the land under clause 4.3(2) of *Pittwater Local Environmental Plan 2014*. Consequently, the proposal works will also exceed the building height control to the same extent as the approved structures plus 150mm for the solar panel roofing materials.

It is not necessary to provide a written request to vary the building height control. This issue was addressed in the decision of Lloyd of the Land and Environment Court in *Gann & Anor v Sutherland Shire Council* [2008] NSWLEC 157 where, at paragraph 19, he concluded:

It follows that there is no legal impediment to the grant of development consent in the present case despite the infringement of the three development standards in the LEP governing maximum building height, maximum gross floor area and the minimum landscaped area. These development standards will be part of the general considerations under s 79C of the Act.

The proposal satisfies the matters for consideration in s. 79C (now s. 4.15) of the Act, as discussed in this Statement of Modifications and Environmental Effects. The proposed solar panel roofing material has no perceptible impact with regards to the satisfaction of the objectives of the building height control.

5. Addition of basement pump room

Detailed design development has revealed the need for a pump room to house a diesel fire hydrant pump. This is essential to fire protect and ensure the safety of future residents and neighbouring properties.

The pump room is located at the western end of the basement garage and is not visible from the public domain or neighbouring properties and will have no visual impact. It is located adjacent to a blank wall on the neighbouring property and has no impact on neighbouring amenity.

The area over the pump room will be landscaped with 800mm of soil depth providing to ensure that substantial plantings can be provided in accordance with the approved landscape plan. Drawing 10708_DA062, Issue B, includes a section through the pump room showing its relationship to the landscaped area and the lightwell and louvres for the townhouse 11 garage (see item 2 above).

6. Stairway from basement garage straightened

The western stairway from the basement garage is proposed to be straightened. This will simplify the design of the stairway and make it easier to construct. It also enables the easier and more practical installation of the approved chair lift.

7. Gate to Townhouse 15(A) relocated

The proposal includes the relocation of the pedestrian gate to Townhouse 15(A) from the western side of its frontage to Beaconsfield Street to the eastern side. The extent of landscaping to Beaconsfield Street is maintained, thereby ensuring that the character of the area is enhanced.

8. Enclosure of approved services areas

Services areas have been approved adjacent to the pedestrian and vehicular accessways to Beaconsfield Street. For aesthetic reasons it is proposed that these services areas be enclosed. This modification will improve the streetscape and enhance the character of the area.

9. External stair 2 deleted

The approved external stair 2 from the basement garage is proposed to be deleted. Since the approval was granted further CA compliance work has been done which reveals that the stair is not required. Deletion of the stair reduces

construction costs and enables the provision of additional landscaping which will enhance the appearance of the development and amenity for the future residents of the building.

10. Wall to Townhouse 11 extended

The wall at the north-western corner of Townhouse 11 on the ground floor level is proposed to be extended by approximately 700mm to provide additional structural support for the approved terrace above. This will reduce construction costs. It is adjacent to a blank wall on the neighbouring property and not visible from the public domain and will have no impact on the amenity of neighbouring properties.

11. Extent of planter reduced

The planter over the driveway to Queens Parade is proposed to be reduced to ensure adequate head clearance to the driveway below. The area of reduction is approximately 4.0m wide by 1.2m deep. Due to the location of the planter it provided little in the way of amenity or streetscape enhancements and its reduction will have no perceptible impacts with regards to streetscape, character of the area or residential amenity.

It is noted that the total landscaped area is increased from 1,979m² (approved) to 1,992m² (proposed). Calculations are shown on Drawing 10708_075, Issue E.

12. Roof over eastern pedestrian entry/exit to garage removed

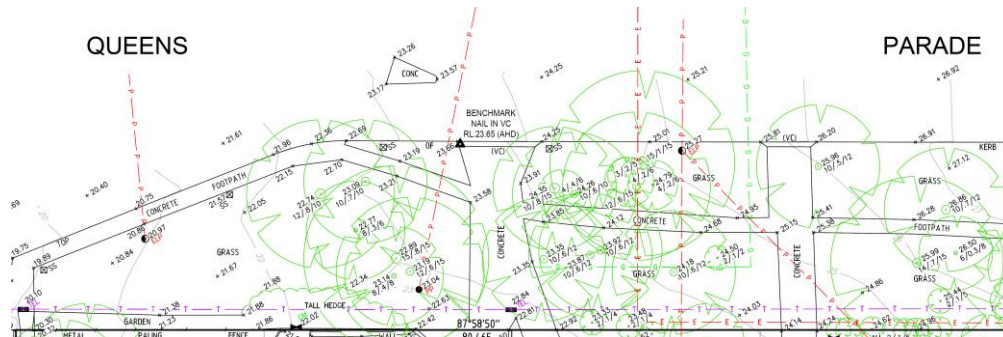
It is proposed to remove the roof over the eastern entry/exit to the garage. The roof is considered to be unnecessary and does not serve any useful purpose. Its deletion will reduce construction costs.

13. Provide 1.5m wide footpaths on Beaconsfield Street and Queens Parade

Condition 12 of Consent DA2019/1280 requires the submission of an application for approval for infrastructure works on Council's roadway. It relevantly requires:

1. *Construction of 2.5 metres wide concrete footpath fronting both Beaconsfield Street and Queens Parade.*
6. *Design and sectional plans for the 2.5 [metres wide] footpath and regrading nature reserve along both Beaconsfield Street and Queens Parade.*

The existing pedestrian footpath on Queens Parade meanders through mature trees that contribute significantly to the streetscape and the character of the area, as shown in the site survey following extract from the Detail Survey:



Extract from detail survey (Drawing 50556 001DT by LTS Lockley Surveyors)

The creation of a 2.5 metres wide footpath on this street frontage will necessitate the removal of a number of these significant trees.

On the Beaconsfield Street frontage there is a steep grass bank approximately 1.5m back from the kerb and the property boundary is 3.3m from the kerb. Providing a 2.5m wide footpath on this frontage will leave insufficient room to provide for landscaping that is shown on the approved landscape plan and would also require significant excavation and retaining walls within the road reserve.



Extract from approved landscape plan (Drawing L.SK.01)

The construction of a 2.5 metres wide footpath on the Beaconsfield Street and Queens Parade frontages will have a significant and unnecessary negative impact on the streetscape and the character of the area. The provision of a 1.5 metres wide footpath will provide sufficient room for pedestrians. It is noted that the road reserve on the opposite side of Queens Parade and Beaconsfield Street is less constrained with regards to the width available and existing vegetation if Council decides to provide a shared cycleway on either street at some time in the future.

The attached letter from arborists Footprint Green confirms that the provision of a 1.5m wide footpath will enable the retention of trees as approved in the landscape plan.

Conclusion

This Statement of Modifications and Environmental Effects has examined a proposal to modify Development Consent DA2019/1280 and concludes:

1. The application can be considered pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*;
2. The proposal satisfies the relevant criteria for assessment pursuant to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*; and
3. The application is suitable for approval.

If you have any questions or require any additional information please feel free to contact me.

Yours sincerely,



Geoff Goodyer
Symons Goodyer Pty Ltd

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