

3 April 2019

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

Dear Sir,

**Statement of Environmental Effects
Section 4.55 (1A) Modification of Consent DA38/2016
No. 25 Spring Cove, Manly**

1.0 Introduction

This Statement of Environmental Effects (SoEE) has been prepared in support of an application seeking the modification of the above development consent pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the application seeks minor changes to the approved internal layout, glazing and landscape detailing with the extent of glazing and floor space slightly reduced as a consequence of the modifications sought.

This submission demonstrates that the modifications sought are permissible with consent and will not give rise to any adverse streetscape, environmental or built form consequences. The previously approved residential amenity outcomes in terms of privacy, solar access and view sharing are not compromised as a consequence of the modifications sought with the previously approved building height, setbacks and envelope unaltered. The proposed reduction in glazing will enhance visual privacy between adjoining development.

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 s4.55(1A) of the Act.

2.0 Site Description

The site known as Lot 13, DP5, DP 1189590, No. 25 Spring Cove Avenue, Spring Cove Estate, Manly. The Estate in which the property is located occupies the south western corner of St Patrick's Estate which is identified as having National Heritage significance and is being developed generally in accordance with development consent DA 482/04. The location of the site is depicted in Figure 1 below.

The subject property is irregular in shape falling approximately 2 metres across its surface in a south-easterly direction. The property is burdened by an easement for drainage 2 metres wide and an easement for overland flow 5 metres wide located adjacent to its western boundary. A right of way 10 metres wide over the adjacent heritage axial pathway adjoins the eastern boundary the property.



Source: SIX Maps

Figure 1 – Aerial Location and Context Photograph

Construction works are underway on the site pursuant to the subject development consent.

3.0 Proposed modifications

The proposed modifications are clearly depicted on plans 2.101(J), 2.102(J), 1.104(N) and 1.105(N) prepared by Tobias Partners. Specifically, the application seeks minor changes to the approved internal layout, glazing and landscape detailing with the extent of glazing and floor space slightly reduced as a consequence of the modifications sought. The modifications can be summarised as follows:

Ground Floor Level

- Deletion of window W11;
- Relocation of window W12;
- A reduction in the area of windows W5, W7 and W8;
- The glazed line of windows W1, W2 and W3 moved inwards to accommodate an integrated privacy screen resulting in a reduction in approved GFA of 2 square metres;
- Minor internal configuration changes; and
- Changes to the approved pool decking and pool fencing and provision of anew centralised paved terrace.

First Floor Level

- Deletion of window W21; and
- A reduction in the area of window W15.

Approval of the modifications will necessitate the modification of consent to reference the revised plans.

The previously stormwater drainage regimes is not materially altered as a consequence of the modifications sought with the modified landscape regime depicted on the accompanying plan prepared by Volker, Klemm Landscape Design.

4.0 Section 4.55 of the Environmental Planning and Assessment Act 1979

Section 4.55(1A) 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 consent authority 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, and*

- (b) *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*
 - (c) *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*
 - (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.*
- (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.*

In answering the above threshold question as to whether the proposal is of minimal environmental impact, we have formed the considered opinion that the modifications will not give rise to any adverse streetscape, environmental or built form consequences. The previously approved residential amenity outcomes in terms of privacy, solar access and view sharing are not compromised as a consequence of the modifications sought with the previously approved building height, setbacks and envelope unaltered. The proposed reduction in glazing will enhance visual privacy between adjoining development. Clearly, the modifications are both quantitatively and qualitatively of minimal environmental impact.

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 previously approved residential amenity outcomes in terms of privacy, solar access and view sharing are not compromised as a consequence of the modifications sought with the previously approved building height, setbacks and envelope unaltered. The proposed reduction in glazing will enhance visual privacy between adjoining development. In this regard, the approved development remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion to that originally approved.

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 application remains a proposal involving the construction of a new dwelling house;
- The previously approved building heights, setbacks and footprint are maintained with a slight decrease in GFA/ FSR and landscaped area. Landscaped area remains well in excess of the policy control with the landscaped quality of the development not compromised;
- The modifications maintain the previously approved environmental outcomes in terms of residential amenity and streetscape presentation.

On the basis of the above analysis we regard the proposed application as being of minimal environmental impact and “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and appropriately dealt with by way of Section 4.55(1A) of the Act.

5.0 Manly Local Environmental Plan 2013

5.1 Zone and Zone Objectives

The subject site is zoned E4 Environmental Living pursuant to the provisions of Manly Local Environmental Plan 2013 (“MLEP”). Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the E4 zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposal, as modified, remains permissible and consistent with the stated objectives as it provides for a low impact, low density residential outcome which will not give rise to any adverse environmental, heritage or foreshore scenic impacts with the proposal appropriately responding to its topography and juxtaposition with surrounding development.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

5.2 Height of Buildings

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

building height (or ***height of building***) *means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

Ground level existing is defined as follows:

ground level (existing) *means the existing level of a site at any point.*

We confirm that the previously approved and compliant building heights are maintained together with the view sharing outcome achieved. All modified works sit comfortable below the 8.5 metre height standard and as such are “deemed to comply” with the associated objectives.

5.3 Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.6:1 representing a gross floor area of 598.2 square metres. The stated objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the proposal provides for a 2 square metre reduction in the approved GFA/ FSR resulting in a GFA of 360 square metres, as defined, representing a compliant FSR of 0.36:1.

Accordingly, Council can be satisfied that the development, as modified, satisfies the numerical FSR standard and its associated objectives.

5.4 Heritage Conservation

Pursuant to clause 5.10 MLEP 2013 we confirm that the subject property forms part of St Patrick's State which is identified as being of national heritage significance. We note that the proposed development varies from that approved pursuant to DA 482/04. In this regard, the application is accompanied by a Modified Statement of Heritage Impact prepared by Zoltan Kovacs. This report contains the following conclusion:

The proposed modifications are negligible in their heritage impacts and they are consistent with the conservation objectives of Manly Council for the estate.

As such, Council can be satisfied that there is no heritage conservation impediment to the granting of consent.

5.5 Earthworks

Pursuant to the clause 6.2 MLEP 2013 provisions we have formed the considered opinion that the proposed excavation has been minimised and is certainly consistent with that reasonably anticipated on a steeply sloping site and will not give rise to any adverse environmental or residential amenity impacts.

Having regard to these provisions, we confirm that the proposal does not require any additional excavation than that assessed and approved pursuant to the original consent.

5.6 Stormwater management

The previously approved stormwater drainage regime is not materially altered as a consequence of the modifications sought.

5.7 Terrestrial biodiversity

Pursuant to clause 6.5 MLEP 2013, the subject property is identified on the Terrestrial Biodiversity Map. In this regard, the modifications sought do not compromise the conclusion contained with the previously submitted and endorsed Terrestrial Biodiversity Report prepared by Total Earth Care which concluded that the proposal is not likely to impose 'a significant effect' on the endangered population of the Long-nosed Bandicoot at North Head.

5.8 Foreshore Scenic Protection Area

Pursuant to clause 6.9(2) the land is identified on the Foreshore Scenic Protection Area Map. Pursuant to clause 6.9(3) development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*

- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Having regard to these provisions we have formed the considered opinion that the proposed development, as modified, will not result in any actual or perceivable impact on the Foreshore Scenic Protection Area compared to the previously approved development on this site.

Council can be satisfied that the development will not give rise to any actual or perceived impact on the Foreshore Scenic Protection Area having regard to the Clause 6.9 considerations.

Further, having given due consideration to the aims of SREP No. 23 – Sydney and Middle Harbours and SEPP (Costal Management) 2018, it is considered that the proposed works, as modified, will not detrimentally impact on the natural environment, visual environment or environmental heritage of Manly or its Coastal Area.

5.9 Development in St Patrick's Estate

The subject property is located within Precinct 10 is identified on the Key Site Map the accordingly the provisions of Section 6.19 of MLEP 2013 apply to the proposed development. Pursuant to clause 6.19(3)(h) development consent must not be granted to development on land in Precinct 10 unless the consent authority is satisfied that the development:

- (i) will not involve the erection of a building within 5 metres of the western boundary of the Precinct or land in Zone RE1 Public Recreation, and*

Comment: We confirm that the proposed dwelling house, as modified, maintains compliant setbacks to the western boundary and adjacent RE1 Public Recreation zoned land with the exception of the modifications to the approved swimming pool, pool deck and landscape elements which remain appropriately described as ancillary landscape elements to which these provisions do not apply.

Having regard to the objectives of the control we note that the swimming pool, deck and landscape elements will have no adverse heritage, archaeological, natural or cultural heritage impact on St Patrick's Estate with such structures sympathetic in scale, built form to the heritage items within the Estate and are consistent with the form of development already approved within this setback area.

- (ii) will not involve the erection of a building within 10 metres of land in Zone E1 National Parks and Nature Reserves, and*

Comment: This provision remains satisfied.

(iii) *will not involve the erection of a building within 5 metres of the centre of the pathway that extends from the Archbishop's Residence to Spring Cove and is identified on the Key Sites Map, and*

Comment: All proposed works continue to maintain a minimum 5 metre setback to the centre of the adjacent heritage pathway.

(iv) *will retain the view to and from the Archbishop's Residence and Spring Cove, if the development is on land identified as "View Cone" on the Key Sites Map,*

Comment: The previously approved building heights are maintained with such heights retain views to and from the Archbishop's Residence and Spring Cove.

These provisions are satisfied.

6.0 Manly Development Control Plan 2013

The modified developments performance when assessed against the applicable MDCP controls is summarised as follows:

Manly Development Control Plan 2013			
Front Setback	Maintain consistent setback	No change to approved front setbacks	YES
Wall and Building Height	Max wall height 7.0m + 600mm parapet and 2 storey form	No change to approved highly articulated, modulated and stepped 1/ 2 storey compliant wall height building form.	YES YES
Open Space	Min 55% of which 35% is to be soft landscaped	588 square metres of open space (59%) of which 451 square metres or 77% is soft landscaping.	YES YES
Carparking	Min 2 Spaces	2 spaces maintained	YES

Having assessed the modified development against the applicable provision of MDCP we note the following:

- The siting and scale of the development is unaltered;
- The proposal maintains the previously approved building setbacks and an appropriate spatial relationship with adjoining development;
- The modified proposal maintains the previously approved view sharing outcomes with a compliant building height and FSR maintained;
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development in relation to visual and aural privacy and solar access with compliant levels of solar access maintained;
- The previously approved landscape and stormwater drainage regimes are not materially altered as a consequence of the modifications sought; and
- The proposal is accompanied by an updated BASIX certificate.

7.0 Conclusion

This submission demonstrates that the modifications sought are permissible with consent and will not give rise to any adverse streetscape, environmental or built form consequences. The previously approved residential amenity outcomes in terms of privacy, solar access and view sharing are not compromised as a consequence of the modifications sought with the previously approved building height, setbacks and envelope unaltered. The proposed reduction in glazing will enhance visual privacy between adjoining development.

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 s4.55(1A) of the Act.

Having given due consideration to the relevant considerations pursuant to s4.15(1) of the Act it has been demonstrated that the proposed modifications are appropriate for approval.

Yours faithfully

Boston Blyth Fleming Pty Limited



Greg Boston

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Director