

12th April 2024

The CEO
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA2023/0083
Demolition works and construction of a dwelling house including swimming pool and boat shed
24 Cabarita Road, Avalon Beach

1. Introduction

On 13th December 2023 the subject application was reported to the Northern Beaches Local Planning Panel (NBLPP) with a recommendation for approval subject to conditions including the following draft condition to which no objection was raised:

17. Amendments to the approved plans

The following amendments are to be made to the architectural plans and landscape plans:

- a) The proposed species are to be amended to ensure there are no species that have a mature height of more than 6m. The species are also to be endemic.*
- b) The proposed privacy screen at the southern elevation (of terrace 2) is to have fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.*

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

The application was a non-public meeting item such that there was no ability for the applicant to address the NBLPP prior to their deliberations and ultimate determination. The NBLPP ultimately resolved to approve the application subject to the modification of draft condition 17 to read as follows:

1. The amendment of condition 17 to read as follows:

17. Amendments to the approved plans

The following amendments are to be made to the architectural plans and landscape plans:

- a) The proposed species of trees and plants are to be amended to ensure there are no species that have a mature height of more than 3 metres. The species are also to be endemic.
- b) The proposed privacy screen at the southern elevation Terrace 2 (level 4) is to be deleted.
- c) Maintain any planting on Terrace 2 (level 4) to a maximum 1.5 metres in height above the finished floor level.
- d) Reduce the depth of the eaves above Terrace 2 (level 4) to 2 metres.

Reason: To improve the views and amenity from the adjoining premises at number 26 Cabarita Road.

The project Architect has subsequently modelled the design, amenity and landscaping implications associated with the condition as imposed by NBLPP to the extent that these conditions have been found to be unreasonable and unnecessary. We appreciate that had the additional analysis contained within this statement, and the accompanying submission prepared by Corben Architects, been available to the NBLPP at the time of determination that the NBLPP would have likely formed the view that condition 17, as originally drafted, provided appropriately for privacy and view sharing to 26 Cabarita Road.

This Statement of Environmental Effects (SoEE) has been prepared in support of an application made pursuant to s4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act) seeking the modification of condition 17 to reflect the wording contained within the assessment report to the NBLPP. This submission is to be read in conjunction with the accompanying Statement of Modification prepared by Corben Architects.

On the basis that the modifications to condition 17 reflect the recommendation contained within the original Council assessment report we are of the considered opinion that the modifications are of minimal environmental impact and that 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.

The proposal succeeds when assessed against the heads of consideration pursuant to section 4.15(1) of the Act. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

2.0 Detail of Modifications Sought

Modifications to Architectural detailing

No changes are proposed to the approved architectural, landscape or stormwater plans.

Modifications to conditions of consent

Condition 17- Approved Plans and Supporting Documentation

We request that condition 17 be modified to reflect the wording contained within the Council assessment report namely:

17. Amendments to the approved plans

The following amendments are to be made to the architectural plans and landscape plans:

- b) The proposed species are to be amended to ensure there are no species that have a mature height of more than 6m. The species are also to be endemic.*

- b) The proposed privacy screen at the southern elevation (of terrace 2) is to have fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.*

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

3.0 Section 4.55(1A) 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, we have formed the considered opinion that based on the additional privacy and view analysis contained within this submission that the modifications sought to condition 17 are of minimal environmental impact with appropriate privacy and view sharing outcomes maintained. Similarly, we are satisfied that the modified development remains substantially the same as that originally approved.

Having regard to the stated reason for the imposition of modified condition 17 by the NBLPP, being to improve the views and amenity from the adjoining premises at No. 26 Cabarita Road, we are satisfied that based on the additional privacy and view analysis contained within this submission, appropriate levels of amenity are maintained to the adjoining property in relation to views, privacy and solar access in accordance with the intent of the condition as imposed.

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.

4.0 Statutory Planning Considerations/ Claim for Modification

We confirm that the proposed modification of condition 17 has no implications in relation to the developments performance when assessed against the applicable considerations and development standards contained within Pittwater Local Environmental Plan 2014 (PLEP).

In relation to an assessment as to the impacts/ implications of condition 17 as imposed by the NBLPP we rely on the accompanying Statement of Modification prepared by Corben Architects. This document clearly demonstrates that condition 17 has the effect of significantly compromising the design and amenity of our client's property to the extent that there are immediate and direct viewing opportunities between the principal living areas and private open spaces of these adjoining properties and a significant reduction in the amenity of the approved Level 4 terrace through an unnecessary reduction in weather protection.

This submission clearly demonstrates that neither the proposed Level 4 terrace roof form nor southern terrace privacy screen unreasonably impact views available from 26 Cabarita Road.

Finally, the conditions limiting the height of planting on the site to 3 metres or less is inconsistent with the DCP requirement for landscaping and the objectives of the C4 Environmental Living zone which seeks to encourage development that retains and enhances foreshore vegetation and wildlife corridors. This application seeks to amend the condition such that any trees are limited to a height of 6 metres which will ensure that the dwelling house sits within a landscaped setting consistent with the desired future character of the area.

5.0 Conclusion

This Statement of Environmental Effects (SoEE) has been prepared in support of an application made pursuant to s4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act) seeking the modification of condition 17 to reflect the wording contained within the assessment report to the NBLPP. This submission is to be read in conjunction with the accompanying Statement of Modification prepared by Corben Architects.

On the basis that the modifications to condition 17 reflect the recommendation contained within the original Council assessment report we are of the considered opinion that the modifications are of minimal environmental impact and that 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.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Act. It is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD

A handwritten signature in black ink, appearing to read 'Greg Boston', is written over a faint, illegible background.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director