

20th November 2024

The CEO
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

**Statement of Environmental Effects
Modification of Development Consent DA2023/1869
Demolition works and construction of a residential flat building
54 – 58 Beaconsfield Street, Newport**

1.0 Introduction

On 2nd October 2024 deferred commencement development consent DA2023/1869 was granted for demolition works and construction of a residential flat building on the consolidated allotment.

We have been engaged to prepare an application to modify the consent pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act). This application seeks to remove the requirement to tank the basement level of the development as detailed within the accompanying Hydrogeological Report including Dewatering Management Plan and Groundwater Seepage Analysis prepared by EIAustralia.

Given that the modifications do not involve any change to the approved built form, landscape or environmental outcomes achieved through approval of the original application Council can be satisfied that the modifications involve 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 Section 4.55(1A) of the Act.

2.0 Detail of Modifications Sought

The accompanying Hydrogeological Report including Dewatering Management Plan and Groundwater Seepage Analysis prepared by EIAustralia supports dewatering for the construction and operational phases of the development rather than relying on a tank basement as originally endorsed by Water NSW in the General Terms of Approval (GTA's) (IDAS1153140) issued 12th February 2024 as referenced in condition 4 of the development consent.

Accordingly, this application seeks the re-referral of the application to Water NSW to obtain amended GTA's referencing the proposed drained basement.

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 the modifications sought are of minimal environmental impact given that the modification does not involve any change to the approved built form, landscape or environmental outcomes achieved through approval of the original application. The modification is both quantitatively and qualitatively of minimal environmental impact.

In answering the 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.

In our opinion a quantitative and qualitative assessment of the application is that it remains substantially the same. The modification is minor and will have no material impact to the surrounding properties. Qualitatively, the physical appearance of the development is unaltered. In this regard the change is considered minor.

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 Pittwater Local Environmental Plan 2014

The Pittwater Local Environmental Plan 2014 (PLEP 2014) is the principal local environmental planning instrument applicable to the land. The relevant provisions of PLEP 2014 and the manner in which they relate to the site and the proposed development are unaltered.

5.0 Pittwater 21 Development Control Plan

Having assessed the modified development against the applicable provision of P21DCP we note the following:

- The siting, scale, form and massing of the development is not altered with the modified proposal maintaining the previously approved building setbacks and spatial relationship with adjoining development,
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development in relation to visual and aural privacy and solar access.
- The modifications provide for the appropriate disposal of stormwater.

6.0 Conclusion

This application seeks to remove the requirement to tank the basement level of the development as detailed within the accompanying Hydrogeological Report including Dewatering Management Plan and Groundwater Seepage Analysis prepared by EIAustralia.

Given that the modifications do not involve any change to the approved built form, landscape or environmental outcomes achieved through approval of the original application Council can be satisfied that the modifications involve 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 Section 4.55(1A) of the Act.

Having given due consideration to the relevant considerations pursuant to s4.15(1) 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



Greg Boston

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Director