

16th May 2022

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 2095

Dear Sir,

Statement of Environmental Effects
Section 4.55(1A) Modification of Consent DA2020/1072
Construction of Seniors Housing
Lots 1 and 2, DP 228962, 1 Drew Place, Belrose

1.0 Introduction

On 10th March 2021 development application DA2020/1072 was approved by Council proposing the demolition of the existing structures and the construction of a seniors housing development on the consolidated allotment.

This Statement of Environmental Effects has been prepared in support of an application seeking a refinement in the detailing of the approved development pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the application seeks changes to the approved roof form and pitch to enhance buildability and to ensure appropriate stormwater drainage and roof form integration with the lift overrun also extended through the breezeway roof to meet manufacturer specifications. Additional weather protection has also been provided to the upper-level balconies with minor changes to the east facing courtyard fenestration in Unit 6 also forming a component of the application.

This submission also requests deletion of condition 12(a) on the basis that appropriate levels of privacy and built form screening are afforded through a combination of spatial separation and the implementation of the approved site landscape regime. Compliance with condition 12(a) is not only unreasonable and unnecessary but also potentially dangerous in the creation of a climbable structure immediately adjacent to the required balustrading. We are advised that the works required by condition 12(a) will not comply with the BCA in relation to the installation and performance of the required balustrading and accordingly this condition should be deleted.

The overall building height, setbacks and general form of the development are maintained with the proposed modifications not compromising the streetscape, landscape or residential amenity outcomes afforded through approval of the original application.

As such, 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 Proposed modifications

Architectural modifications

The proposed modifications are shown clouded and described on the following architectural plans prepared by Turner Hughes Architects.

DA01-G SITE PLAN
DA02
DA03-E GROUND FLOOR PLAN
DA04-F FIRST FLOOR PLAN
DA05-B SECTION A
DA06-B SECTION B
DA07-B SECTION C
DA08-B ELEVATION 01
DA09-B ELEVATION 02
DA10-B ELEVATION 03
DA11-E UNIT DETAILS - UNITS 1
DA12-E UNIT DETAILS - UNITS 2
DA13-E UNIT DETAILS - UNITS 3
DA14-E UNIT DETAILS - UNITS 4&5
DA15-E UNIT DETAILS - UNITS 6
DA16-A LOCATION PLAN
DA17-A SITE ANALYSIS
DA18-A SUN STUDY - JUNE 21 9AM
DA19-A SUN STUDY - JUNE 21 MIDDAY
DA20-A SUN STUDY - JUNE 21 3PM
DA21-A INTERNAL SOLAR ACCESS GROUND
DA22-A INTERNAL SOLAR ACCESS FIRST
DA23-A DEMOLITION/WASTE PLAN

Specifically, the modifications can be summarised as follows:

1. Western building pavilion metal roof pitch increased from 5° to 14° whilst maintaining the previously approved overall ridge height for the development.
2. Small sections of the metal roof below the gables on the western pavilion removed and the gables extended to be flush with the breezeway roof.
3. The provision of a gable to the roof form above Unit 6 to better integrate with the breezeway roof.
4. The extension of the lift overrun through the breezeway roof.
5. Roof pitch to Unit 3 increased from 12° to 20°.
6. The relocation and slight reduction in size of the bathroom and study windows to Unit 6.
7. The provision of polycarbonate roof sheeting to the approved first floor pergolas.

8. The provision of a timber pergola with polycarbonate roof sheeting to the Pringle Avenue facing first floor Unit 5 bedroom balcony.

Modifications to conditions of consent

The architectural modifications will necessitate the modification of condition 1(a).

This submission also requests deletion of condition 12(a) which reads:

- a) *A planter box with an internal dimension of 600mm x 400mm is to be provided located adjacent to northern balustrade of the balconies for Units 5 and 6. Climbers to be planted into the planter boxes with wires or trellis provided 400mm above the top of the balustrade to encourage the climber to provide visual softening and enhanced privacy to adjoining properties.*

3.0 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, we have formed the considered opinion that the modifications sought are of minimal environmental impact given that the previously approved overall building height, setbacks and envelope are otherwise unaltered. The approved residential amenity outcomes in terms of solar access, privacy and view sharing are not compromised with appropriate levels of privacy maintained through a combination of spatial separation and the implementation of the approved site landscape regime.

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.

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 building envelope is not significantly altered with the design quality, streetscape and residential amenity outcomes afforded through approval of the original application not compromised.

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 senior’s housing development,
- The previously approved overall building heights, setbacks and footprint are maintained, and
- The modifications maintain the previously approved environmental outcomes in terms of residential amenity, landscaping, drainage and streetscape presentation.

The changes to the approved roof form will not give rise to any inappropriate or jarring streetscape consequences.

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 Warringah Local Environmental Plan 2011

Zoning and permissibility

The subject site is zoned R2 Low Density Residential pursuant to the provisions of Warringah Local Environmental Plan 2011 (WLEP) with the modifications to the approved seniors housing development remaining permissible with consent pursuant to the savings provisions contained within the recently repealed State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPPHSPD).

Height of buildings

We confirm that the previously approved overall building height, wall heights and number of storeys are unaltered as a consequence of the modifications sought. Strict compliance with the 8.5 metre height standard is maintained.

5.0 Warringah Development Control Plan

Having assessed the modified development against the applicable provision of Warringah Development Control Plan we note the following:

- The overall building height, siting, scale and footprint of the development are maintained,

- The proposal maintains the previously approved side and rear setbacks and an appropriate spatial relationship with adjoining development,
- The modified proposal does not compromise the previously approved landscape or drainage regimes,
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development in relation to visual and aural privacy, solar access and view sharing. Appropriate levels of privacy and built form screening are afforded through a combination of spatial separation and the implementation of the approved site landscape regime.
- No additional excavation is proposed, and
- The modifications proposed to the roof form will not give rise to any inappropriate or jarring streetscape consequences nor compromise the design quality of the development as approved.

In relation to the deletion of condition 12(a), we note that the northern edge of the first floor balcony to Unit 5 is located adjacent to the front setback area of No. 40 Pringle Avenue with a 6 metre setback maintained to this common boundary. We also note that there is no first floor fenestration within the side boundary facing façade of this immediately adjoining property as depicted in Figure 1 below.



Figure 1 - Photograph showing absence of first floor side boundary facing fenestration at No. 40 Pringle Avenue

Such circumstance ensures that the use of the Unit 5 balcony will not give rise to any unacceptable visual privacy impacts between adjoining development and accordingly the additional privacy attenuation measures required by condition 12(a) are unreasonable and unnecessary.

In relation to the Unit 6 balcony, we note that the balcony edge maintains a 9 metre setback to the common boundary with the existing vegetation maintain both on the site and within the rear yard of the adjoining property combining to ensure the maintenance of appropriate visual privacy between adjoining development. The existing/retained vegetation adjacent to the northern boundary of the property is depicted in Figure 2 below. Again, under such circumstances the additional privacy attenuation measures required by condition 12(a) are unreasonable and unnecessary.



Figure 2 - Photograph showing existing/retained vegetation within the vicinity of the north-eastern corner of the property

Finally, we note that compliance with condition 12(a) is not only unreasonable and unnecessary but also potentially dangerous in the creation of a climbable structure immediately adjacent to the required balustrading. We are advised that the works required by condition 12(a) will not comply with the BCA in relation to the installation and performance of the required balustrading and accordingly this condition should be deleted.

6.0 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

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

- The modifications proposed to the roof form will not give rise to any inappropriate or jarring streetscape consequences nor compromise the design quality of the development as approved. With the exception of the roof design changes the modifications are contained within the approved building envelope such that the approved developments compatibility with the character of the area is not compromised,
- The siting, scale, form and massing of the development is not altered with the modified proposal maintaining the previously approved and compliant building height (measured to uppermost ceiling), setbacks and spatial relationship with adjoining development,
- The modified proposal will not give rise to any adverse public or private view affectation with compliant accessibility maintained,
- The previously approved off-street carparking circumstance is maintained,
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development through approval of the original application in relation to views, solar access and privacy. Appropriate levels of privacy and built form screening are afforded through a combination of spatial separation and the implementation of the approved site landscape regime, and
- The development, as modified, does not compromise the previously approved landscape, waste management or stormwater drainage regimes.

6.0 Conclusion

This Statement of Environmental Effects has been prepared in support of an application seeking a refinement of the approved development pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the application seeks changes to the approved roof form and pitch to enhance buildability and to ensure appropriate stormwater drainage and roof form integration with the lift overrun also extended through the breezeway roof to meet manufacturer specifications. Additional weather protection has also been provided to the upper-level balconies with minor changes to the east facing courtyard fenestration in Unit 6 also forming a component of the application.

This submission also requests deletion of condition 12(a) on the basis that appropriate levels of privacy and built form screening are afforded through a combination of spatial separation and the implementation of the approved site landscape regime. Compliance with condition 12(a) is not only unreasonable and unnecessary but also potentially dangerous in the creation of a climbable structure immediately adjacent to the required balustrading. We are advised that the works required by condition 12(a) will not comply with the BCA in relation to the installation and performance of the required balustrading and accordingly this condition should be deleted.

The overall build heights, setbacks and general form of the development are maintained with the proposed modifications not compromising the streetscape, landscape or residential amenity outcomes afforded through approval of the original application. As such, 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 is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

Yours faithfully

Boston Blyth Fleming Pty Limited

A handwritten signature in black ink, appearing to read 'Greg Boston', is written over a horizontal line.

Greg Boston
B Urb & Reg Plan (UNE) MPIA
B Env Hlth (UWS)
Director