

4th October 2024

The CEO
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA 2022/1675
Alterations and additions to a dwelling house and construction of a swimming pool
57 Cutler Road, Clontarf

1.0 Introduction

On 27th June 2023 development consent was granted to DA 2022/1675 proposing alterations and additions to a dwelling house and construction of a swimming pool on the subject allotment.

We have been engaged to prepare an application to modify the consent pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the modifications seek a reduction in the scope of approved works including the deletion of the approved swimming pool and the removal of a tree which is causing damage to the existing sewer infrastructure and which can be removed pursuant to the 10/50 Vegetation Clearing Code of Practice in accordance with section 100Q of the Rural Fires Amendment (Vegetation Clearing) Act 2014.

The application also proposes a new rainwater tank at the rear of the property, the extension of the approved ground floor deck over the alignment of the deleted swimming pool and a 100mm increase in the height of the proposed first level floor plate. The first floor roof form is changed to a skillion although the overall height of the approved roof is unaltered.

The consent authority can be satisfied that the proposal remains, in its modified state, an application proposing alterations and additions to a dwelling house and the construction of a swimming pool, with the proposed modifications not compromising the streetscape or residential amenity outcomes afforded through approval of the original application in terms of views, privacy or solar access.

Under such circumstances, the modified proposal represents substantially the same development as originally approved and accordingly the application is appropriately dealt with by way of Section 4.55(2) of the Act.

2.0 Detail of Modifications Sought

The proposed modifications are shown clouded on the following Architectural plans prepared by Gartner Trovato Architects:

No	DRAWING NAME
S4.55-01	COVER
S4.55-02	LOCATION PLAN
S4.55-03	STREET ANALYSIS
S4.55-04	SITE PLAN
S4.55-05	LOWER GROUND FLOOR PLAN
S4.55-06	GROUND FLOOR PLAN
S4.55-07	UPPER FLOOR PLAN
S4.55-08	ELEVATIONS N + S
S4.55-09	ELEVATIONS E + W
S4.55-10	SECTIONS 01
S4.55-11	SECTIONS 02
S4.55-12	HEIGHT PLANE ANALYSIS
S4.55-13	3D VIEWS / MATERIALS + FINISHES
S4.55-14	SHADOW DIAGRAMS
S4.55-15	BUILDING CONTROL DIAGRAMS
S4.55-16	DEMOLITION EXCAVATION PLAN
S4.55-17	WINDOW SCHEDULE
S4.55-19	ADJACENT SHADOWS 3D - 01
S4.55-20	ADJACENT SHADOWS 3D - 02
S4.55-21	VIEWS FROM THE SUN
S4.55-22	SECTIONS 03
S4.55-23	EXTRA 3D VIEWS
S4.55-24	CONSTRUCTION MANAGEMENT PLAN

Specifically, the modifications are as follows:

A-01

- Upper roof changed from concrete to timber framed skillion
- Roof curved details removed.

A-03

- Pool removed due to cost
- Rear Deck Extended

- Front balcony curve removed + Planter box removed
- Bed 3 Balcony removed
- Revised external stair layout
- Rain water tank added

A-04

- W-23 reduced
- W-21 reduced

A-05

- Upper roof now timber framed and skillion
- Window sizes amended

A-06

- Upper roof now timber framed and skillion
- Window sizes amended

This application is accompanied by an arboreal advice prepared by Arbor Express in support of the proposed tree removal. Although the application seeks the removal of a tree and elevated planter box elements the overall landscape quality of the development will not be compromised subject to appropriate compensatory tree planting.

This application also seeks the modification of Condition 1 to reflect the amended plans the subject of this application.

3.0 Section 4.55 of the Environmental Planning and Assessment Act 1979

Section 4.55(2) of the Act provides that:

(2) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development 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

.....

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 approved development remains, in its modified state, an application proposing alterations and additions to the existing dwelling house which will continue to relate to its surrounds and adjoining development in a manner consistent with that sought through approval of the original application.

The previously approved streetscape, privacy, solar access, view sharing and general amenity outcomes afforded by the original approval are not compromised.

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 proposed use and residential density do not change,
- The building form, footprint, height, floor space, car parking, landscaping and drainage circumstances are not significantly altered,

- The proposal maintains a complimentary and compatible streetscape presentation as depicted in the comparative images over page, and
- The modifications maintain the previously approved/ intended residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk and overshadowing and view sharing.



Figure 1 - Approved streetscape presentation



Figure 2 - Proposed modified streetscape presentation

On the basis of the above analysis, we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.55(2) of the Act.

4.0 Manly Local Environmental Plan 2013

Zoning and permissibility

The subject property is zoned R2 Low Density Residential pursuant to Manly Local Environmental Plan 2013 (“MLEP 2013”) with dwellings permissible in the zone with consent. The stated objectives of the zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development will remain in its modified form permissible with consent and consistent with the zone objectives as outlined. Accordingly, there is no statutory zoning or zone objective impediment to the granting of approval to the modifications sought.

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. We confirm that the overall height of the approved development is maintained with a maximum height of 9.14m representing a variation of 7.52%. That said, the replacement of the flat roof with a skillion roof form results in a minor reduction in overall building height across the proposed upper-level roof form including consequential reduction in overshadowing.

Under such circumstances, we are satisfied that the overall building height not only remains consistent with that originally approved but will remain consistent with the objectives of the building height standard such that strict compliance is unreasonable and unnecessary.

Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 230.6 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.*

We confirm that the proposed modifications do not alter the previously approved GFA/FSR and to that extent the development will continue to satisfy the objectives of the FSR standard to the extent that strict compliance is unreasonable and unnecessary.

Foreshore Scenic Protection Area

Pursuant to clause 6.9 the subject site is located within a foreshore scenic protection area. The development as modified will not result in any adverse impact to the scenic quality of the area or impact on the visual amenity of the Harbour foreshore. The proposed works will not be readily discernible from the foreshore area and in any event will not be perceived as inappropriate or jarring have regard to the built form characteristics established within the site's visual catchment. These provisions are satisfied.

5.0 Manly Development Control Plan 2013

The relevant provisions of the Manly Development Control Plan 2013 in relation the proposed works are detailed as follows:

Control	Requirement	Proposed	Compliance
<p>Streetscapes and Townscapes</p> <p>3.1</p>	<p>To minimise any negative visual impact of walls, fences and carparking on the street frontage.</p> <p>To ensure development generally viewed from the street complements the identified streetscape.</p> <p>To encourage soft landscape alternatives when front fences and walls may not be appropriate.</p> <p>To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.</p> <p>To assist in maintaining the character of the locality.</p> <p>To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.</p> <p>To minimise negative visual impact, in particular at the arterial road entry points into</p>	<p>The development as modified will continue to be consistent with the existing streetscape character of the local area which is eclectic in nature.</p> <p>The proposal introduces a building of exceptional design quality into the existing streetscape where it will contribute to the streetscape quality of the area generally and reflect the desired future character of development in the area.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	<p>the Council area and the former Manly Council area, so as to promote townscape qualities.</p>		
<p>Landscaping Design 3.3.1</p>	<p>To encourage appropriate tree planting and maintenance of existing vegetation.</p> <p>To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.</p>	<p>The application seeks the removal of a tree which is causing damage to the existing sewer infrastructure and which can be removed pursuant to the 10/50 Vegetation Clearing Code of Practice in accordance with section 100Q of the Rural Fires Amendment (Vegetation Clearing) Act 2014.</p> <p>Although the application seeks the removal of a tree and elevated planter box elements the overall landscape quality of the development will not be compromised subject to appropriate compensatory tree planting.</p>	<p>Yes</p>
<p>Preservation of Trees 3.3.2</p> <p>Footpath Tree Planting 3.3.3</p>	<p>To protect and enhance the urban forest of the Northern Beaches.</p> <p>To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.</p>	<p>As above.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
<p>Sunlight Access and Overshadowing</p> <p>3.4.1</p>	<p>New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or</p> <p>Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.</p> <p>Given the orientation of the site at least 2 hours of solar access is to be maintained to the windows or glazed doors to living rooms of adjacent properties between 9am and 3pm on 21st of June</p>	<p>Shadow diagrams have been prepared and provided within the architectural set.</p> <p>The shadow diagrams demonstrate that the modifications to the upper-level roof form will result in a slight reduction in overall shadowing impact compared to that originally approved.</p>	<p>Yes</p> <p>Remains consistent with original approval.</p>
<p>Privacy and Security</p> <p>3.4.2</p>	<p>To minimise loss of privacy to adjacent and nearby development by:</p> <ul style="list-style-type: none"> • appropriate design for privacy (both acoustical and visual) including 	<p>The proposal has appropriately considered the amenity of neighbours with regard to privacy.</p> <p>Although the ground level rear deck is extended over the alignment of the deleted swimming pool appropriate privacy will be maintained to all surrounding properties</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	<p>screening between closely spaced buildings;</p> <ul style="list-style-type: none"> mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings. <p>To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.</p> <p>To encourage awareness of neighbourhood security.</p>	<p>consistent with the outcome achieved through approval of the original scheme.</p> <p>The modified proposal continues to respond appropriately to the juxtaposition of surrounding development in relation to the maintenance of appropriate privacy and amenity.</p>	
<p>Stormwater Management</p> <p>3.7</p>	<p>To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.</p> <p>To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties</p>	<p>All stormwater will continue to be connected into the existing stormwater disposal system which gravity drains to Cutler Road.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	from flooding and stormwater inundation.		
Waste Management 3.8	All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan.	All demolition and construction materials will be disposed of appropriately or reused/recycled where possible as detailed within the accompanying waste management plan.	Yes
Number of Storeys 4.1.2.2	2 storeys	No change	No Part 2 and part 3 storey acceptable on merit
Wall Height 4.1.2.1	7.8m	No change	No Minor breaching elements acceptable on merit
FSR 4.1.3	0.4:1	No change 0.39:1 based on undersized allotment provisions.	Yes

Control	Requirement	Proposed	Compliance
Front Setback 4.1.4.1	Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.	No change	Yes
Side Setbacks 4.1.4.2	1/3 of wall height	No change	No Minor variations acceptable on merit
Rear Setbacks 4.1.4.4	Rear boundary setbacks shall not be less than 8 metres. Rear setbacks must relate to prevailing pattern of setbacks in the immediate vicinity.	<p>The previously approved rear setbacks to the dwelling house are maintained with the ground floor deck extended to within 1.2m the rear boundary over the alignment of the deleted swimming pool.</p> <p>Such rear boundary setback is consistent with the rear boundary setbacks established by the 2 immediately adjoining properties and No's 55 and 59 Cutler Road with the proposed setbacks clearly relating to the prevailing rear boundary setbacks established by adjoining development within immediate vicinity of the site.</p> <p>Given the juxtaposition of principal living areas and private open spaces within surrounding development which are orientated to the south to take advantage of available views, and which provide for a degree of mutual</p>	No Acceptable on merit

Control	Requirement	Proposed	Compliance
		<p>overlooking, the resultant level of privacy maintained is considered to be contextually acceptable.</p> <p>Strict compliance has been found to be both unreasonable and unnecessary given that the application represents legitimate alterations and additions to an existing dwelling house and the consistency of the proposal with the objectives of the applicable controls.</p>	
<p>Open Space and Landscaping</p>	<p>60% Open Space</p> <p>40% Soft Landscaping</p>	<p>No change.</p>	<p>Yes</p>
<p>Parking, Vehicular Access and Loading</p> <p>4.1.6</p>	<p>The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.</p> <p>the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.</p>	<p>No change.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
<p>Development on Sloping Sites</p> <p>4.1.8</p>	<p>To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.</p> <p>To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.</p> <p>To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing areas.</p>	<p>A reduction in excavation with the deletion of the approved swimming pool.</p>	<p>Yes</p>
<p>Swimming pools</p> <p>4.1.9</p>	<p>The setback of the outer edge of the pool/spa concourse from the side and rear boundaries must be at least 1m, with the water line being at least 1.5m from the boundary.</p>	<p>Deleted.</p>	<p>N/A</p>

6.0 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979(as amended):

The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.

The modified development responds positively to the relevant outcomes and built form controls of the Manly Local Environmental Plan and Development Control Plan.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Context and Setting

i) *What is the relationship to the region and local context on terms of:*

- *the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

The 3 dimensional form, streetscape appearance and landscape outcomes as approved are not compromised as consequence of the modifications sought.

ii) *What are the potential impacts on adjacent properties in terms of:*

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

The modifications maintain the previously approved/ intended residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk and overshadowing and view sharing,

Access, transport and traffic

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *travel demand?*
- *dependency on motor vehicles?*

- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

The approved car parking arrangement is maintained.

Public domain

There are no public domain changes.

Economic impact in the locality

The proposed development will provide short term employment opportunities during construction.

Site design and internal design

i) *Is the development design sensitive to environmental conditions and site attributes including:*

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

The modifications maintain the previously approved/ intended residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk and overshadowing and view sharing,

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The proposed development will comply with the provisions of the Building Code of Australia as detailed within the accompanying report prepared by Building Code Clarity. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health, safety and accessibility.

Construction

i) What would be the impacts of construction activities in terms of:

- *the environmental planning issues listed above?*
- *site safety?*

Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

The suitability of the site for the development.

Does the proposal fit in the locality?

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any insurmountable development constraints. The site is well located with regards to utility services and public transport. There will be no excessive levels of transport demand created.

Are the site attributes conducive to development?

The site has no special physical or engineering constraints and is suitable for the proposed development.

Any submissions received in accordance with this Act or the regulations.

It is envisaged that any submissions made in relation to the proposed development will be appropriately assessed by Council.

The public interest.

It is considered that the development will result in a significant addition of good design to the locality.

7.0 Conclusion

The modifications seek a reduction in the scope of approved works including the deletion of the approved swimming pool and the removal of a tree which is causing damage to the existing sewer infrastructure and which can be removed pursuant to the 10/50 Vegetation Clearing Code of Practice in accordance with section 100Q of the Rural Fires Amendment (Vegetation Clearing) Act 2014.

The application also proposes a new rainwater tank at the rear of the property, the extension of the approved ground floor deck over the alignment of the deleted swimming pool and a 100mm increase in the height of the proposed first level floor plate. The first floor roof form is changed to a skillion although the overall height of the approved roof is unaltered.

The consent authority can be satisfied that the proposal remains, in its modified state, an application proposing alterations and additions to a dwelling house and the construction of a swimming pool, with the proposed modifications not compromising the streetscape or residential amenity outcomes afforded through approval of the original application in terms of views, privacy or solar access.

Under such circumstances, the modified proposal represents substantially the same development as originally approved and accordingly the application is appropriately dealt with by way of Section 4.55(2) 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

B Urb & Reg Plan (UNE) MPIA

Director