

15 May 2020

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 DA2019/0541
Construction of a dwelling house
2 Ellery Parade, Seaforth

1.0 Introduction

On 7th August 2019 development application DA2019/0541 was approved by Council proposing the demolition of the existing dwelling and the construction of a new 2 storey dwelling house with garage and landscape works on the subject site.

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 to integrate the required 2000 litre rainwater tank, which as approved is located within the front setback, into the approved garage structure to improve aesthetics and to reflect the quality of the overall development in terms of build quality, material longevity, low maintenance design and enhanced streetscape outcomes.

The application also includes the introduction of a new skylight, changes to the pool house including the re-pitching of the roof and the modification of the approved swimming pool to include a spa.

The height, setback and form of the single storey car parking structure, as modified, is entirely commensurate with that established by adjoining development and development generally within the site's visual catchment and considerably lower and setback further than the existing carparking structure on the site. The 2.6 metre deep soil landscaped setback is to be densely landscaped as detailed on the approved landscape plans prepared by Paul Scrivener Landscape Architecture such that the development will be softened and screened in a streetscape context.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed garage, by virtue of its front setbacks and design, offensive, jarring or unsympathetic in the context of adjoining and surrounding development.

The balance of the modifications sought are minor in nature and will not give rise to any adverse streetscape, residential amenity or environmental consequences.

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

The proposed modifications are depicted on Architectural plans DA02(A) to DA 07(A) prepared by Brick Architects. Specifically, the modifications involve the integration of the required 2000 litre rainwater tank, which as approved is located within the front setback, into the approved garage structure to improve aesthetics and enhance the streetscape presentation of the development. The application also includes the introduction of a new skylight, changes to the pool house including the re-pitching of the roof and the modification of the approved swimming pool to include a spa.

The approved building heights, FSR and setbacks are otherwise unaltered.

The revised stormwater design is detailed in the attached stormwater design statement, dated 21st April 2020, prepared by Stellen Civil Engineering and accompanying plan DR-001(3). The required landscape design changes within the front setback are appropriately dealt with by way of condition.

The application will necessitate the modification of condition 1 of the consent to reference the amended plans.

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 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. The modifications are 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.

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 height and envelope are unaltered with the residential amenity outcomes in terms of solar access, privacy and view sharing 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 dwelling house;
- The previously approved building heights, setbacks and footprint are maintained;
- 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.

4.0 Manly Local Environmental Plan 2013

Zoning and permissibility

The subject site is zoned R2 Low Density Residential pursuant to the provisions of Manly Local Environmental Plan 2013 (MLEP) with the modifications to the approved dwelling house remaining permissible with consent.

Height of buildings

We confirm that the previously approved 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.

Such outcome preserves the view sharing scenario achieved through approval of the original scheme.

Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.45:1 representing a gross floor area of 333m².

We conform that the previously approved GFA/ FSR of 330.1 square metres (0.44:1) is unaltered noting that a rainwater tank is not GFA as defined.

5.0 Manly Development Control Plan 2013

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

- With the exception of the integrated rainwater tank, minor pool cabana changes and introduction of a skylight and spa, the siting and scale of the development is unaltered;
- The proposal maintains the previously approved building heights and side and rear setbacks and an appropriate spatial relationship with adjoining development;
- The modified proposal maintains compliant FSR and landscaped area outcomes;
- 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.
- No additional excavation is proposed other than to accommodate the spa.

In terms of the proposed front setback we note that the height, setback and form of the single storey integrated parking/ rainwater tank structure are entirely commensurate with that established by adjoining development and development generally within the site's visual catchment and considerably lower and setback further than the existing carparking structure on the site as depicted in Figures 1 and 2. In support of this aspect of the application we note:

- Aesthetically the original plastic RWT was sitting between the front wall and the boundary fence providing an ugly streetscape presentation for a newly constructed architecturally designed home;
- The new brick/concrete RWT is proposed to sit within the garage structure camouflaging it from the street;
- The new brick/concrete RWT will be more durable and easy to maintain than a plastic tank;
- The size of the new RWT will be much larger to facilitate more water storage for the property and OSD;
- The proposed garage front line is 600mm further back than the existing carport construction;
- The proposed garage roof height is 2260mm lower than the existing carport roof line;
- Both of the points above effectively mean the proposed garage is further back and much lower than the existing structure making the streetscape more open to the streetscape;
- Landscaping at the front of the property will ensure the front wall of the garage is discreet particularly when compared to the existing carport.

The 2.6 metre deep soil landscaped setback is to be densely landscaped as detailed on the approved landscape plans prepared by Paul Scrivener Landscape Architecture such that the development will be softened and screened in a streetscape context.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed garage, by virtue of its front setbacks and design, offensive, jarring or unsympathetic in the context of adjoining and surrounding development.

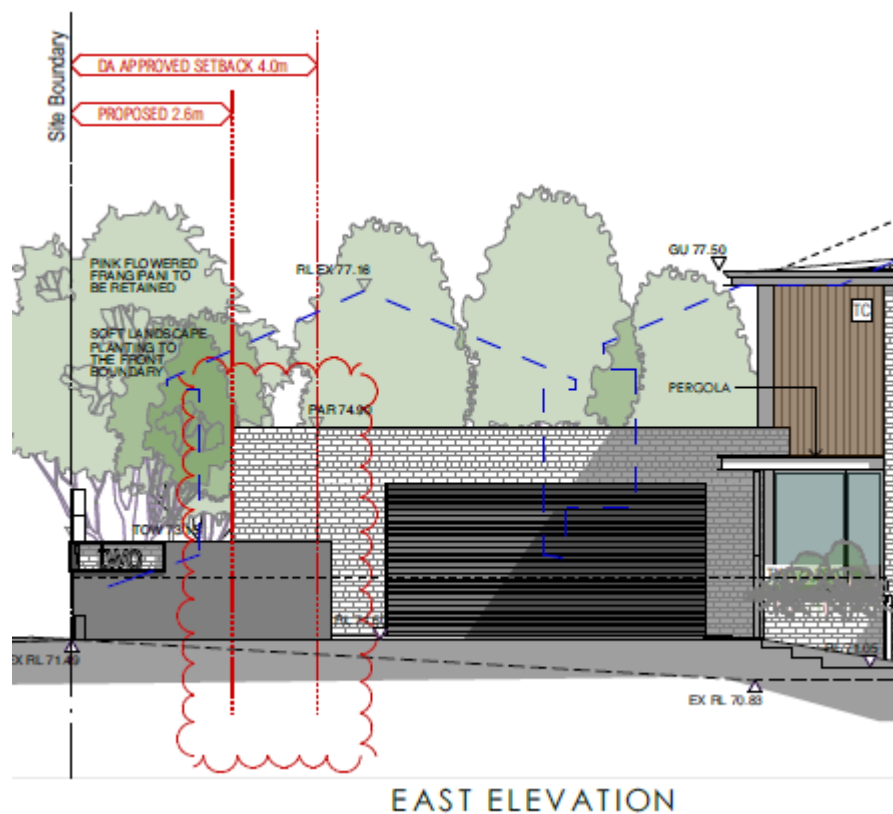


Figure 1 – Plan extract of eastern elevation showing proposed single storey carparking structure located some 2.26 metre lower, and 500mm setback further into the site, than the existing carparking structure at the front of the subject property as outlined in blue.

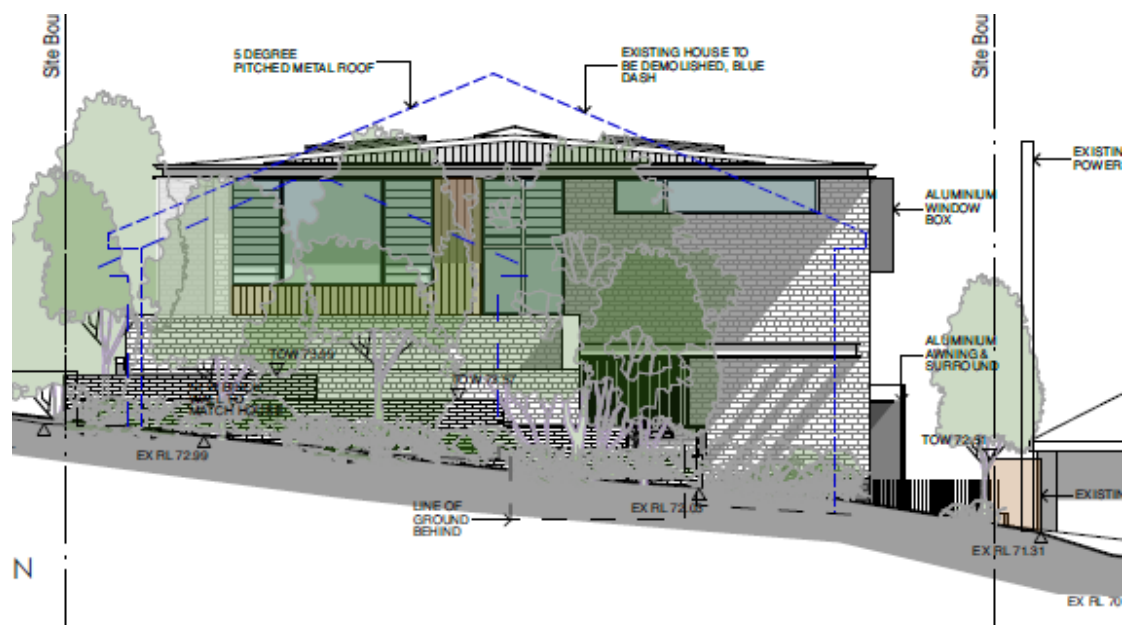


Figure 2 – Plan extract of southern elevation showing proposed single storey carparking structure located some 2.26 metre lower, and 500mm setback further into the site, than the existing carparking structure at the front of the subject property as outlined in blue.

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 to integrate the required 2000 litre rainwater tank, which as approved is located within the front setback, into the approved garage structure to improve aesthetics and enhance the streetscape presentation of the development.

The application also includes the introduction of a new skylight, changes to the pool house including the re-pitching of the roof and the modification of the approved swimming pool to include a spa.

The height, setback and form of the single storey car parking structures are entirely commensurate with that established by adjoining development and development generally within the site's visual catchment and considerably lower and setback further than the existing carparking structure on the site. The 2.6 metre deep soil landscaped setback is to be densely landscaped as detailed on the approved landscape plans prepared by Paul Scrivener Landscape Architecture such that the development will be softened and screened in a streetscape context.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed garage, by virtue of its front setbacks and design, offensive, jarring or unsympathetic in the context of adjoining and surrounding development. The balance of the modifications sought are minor in nature and will not give rise to any adverse streetscape, residential amenity or environmental consequences.

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.

Yours faithfully

Boston Blyth Fleming Pty Limited



Greg Boston

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Director