

28<sup>th</sup> July 2023

The CEO  
Northern Beaches Council  
PO Box 82  
Manly NSW 2095

Dear Sir/ Madam,

**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 10<sup>th</sup> 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 the modification of the approved landscape plan to provide for the replacement of Tree 14 which was impacted during demolition works and subsequently removed. The replacement tree planting is depicted on the accompanying landscape plans prepared by APLD with the replacement tree planting ensuring that the landscape regime as originally approved is not compromised.

This application seeks the modification of condition 1 to reference the amended landscape plans and the modification of condition 32 to remove the reference to Tree 14.

The balance of the approved built form and landscape outcomes for development on the land are not compromised. 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 application seeks the modification of the approved landscape plan to provide for the replacement of Tree 14 which was impacted during demolition works and subsequently removed. The replacement tree planting is depicted on the accompanying landscape plans prepared by APLD with the replacement tree planting ensuring that the landscape regime as originally approved is not compromised.

This application seeks the modification of condition 1 to reference the amended landscape plans and the modification of condition 32 to remove the reference to Tree 14.

## **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 removal of T14 is appropriately compensated for through the replacement planting proposed which will ensure that the overall landscape outcome for the site is not compromised. The built form arrangement on the site is unaltered as is the streetscape and residential amenity outcomes afforded through approval of the original application.

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 built form and landscape outcomes for the site are 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 including providing for an appropriate landscape setting.

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, and
- The previously approved built form and landscape outcomes are maintained.

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 there are no changes to the approved built form circumstance.

#### **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 previously approved built form arrangement on the site is not altered,
- The proposal maintains the previously approved landscape outcome for development on the land noting that Tree 14 is replaced by an appropriate compensatory planting which will achieve the same landscape outcome for the development,
- 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,

- The previously approved landscaped area outcome is maintained.

## **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 that the previously approved landscape and deep soil landscaping outcomes are maintained.

## **6.0 Conclusion**

This Statement of Environmental Effects has been prepared in support of an application seeking the modification of the approved landscape plan to provide for the replacement of Tree 14 which was impacted during demolition works and subsequently removed. The replacement tree planting is depicted on the accompanying landscape plans prepared by APLD with the replacement tree planting ensuring that the landscape regime as originally approved is not compromised.

This application seeks the modification of condition 1 to reference the amended landscape plans and the modification of condition 32 to remove the reference to Tree 14.

The balance of the approved built form and landscape outcomes for development on the land are not compromised. 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**  
B Urb & Reg Plan (UNE) MPIA  
B Env Hlth (UWS)  
**Director**