

Manly NSW 1655 Dear

Sir,

**Statement of Environmental Effects**  
**4.56 Modification of Development**  
**Consent 2019/407794 Proposed**  
**Residential Development**  
**21 Whistler Street, Manly**

**1.0 Introduction**

On 22/07/2020 development consent 2019/407794 was granted pursuant to Land and Environment Court proceedings proposing the demolition and then construction of a new 5 story apartment building at 21 Whistler Street Manly.

The construction works, the subject of this consent, have not physically commenced however the demolition of the existing building has been completed.

This Statement of Environmental Effects (SoEE) has been prepared in support of an application seeking to make minor alterations to the approved development as a result of changes made during design development in response to engineer advice and purchaser requests. The modifications include minor alterations to the basement, primarily consisting of a relocation of the turntable and modifications to the perimeter wall to structural requirements. Minor modifications have also been made to the façade, finishes, foyer and entry doors at ground level in addition to the car lift. On level 2, the two proposed units have been combined and modified into a single, three bedroom unit and other minor alterations have been made to apartments on the other levels in response to the relocation of the garage and kitchen exhaust.

This application is made pursuant to s4.56 of the Environmental Planning and Assessment Act 1979 (the Act).

We note that the majority of modifications are contained wholly within the approved building footprint and envelope with particular care taken to maintain the building design, streetscape and residential amenity outcomes afforded through approval of the original proposal.

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 s4.56 of the Act.

## **2.0 Detail of Modifications Sought**

The proposed modifications are depicted on architectural plans S4.55 (01) to S4.55 (13) prepared by Wolski Coppin Architecture. Specifically, the modifications include:

### **BASEMENT (Drawing 01 – REV E)**

- 1 - Relocate turntable
- 2 – Relocate stair entry door
- 3 – Modify northern wall to car lift
- 4 – Perimeter wall increased to structural requirements
- 5 – Relocate Garbage Room to Ground Level in consultation with council waste management department
- 6 – Relocate and reconfigure bike racks

### **GROUND (Drawing 02 – REV E)**

- 1 – Relocate commercial garbage bins in consultation with waste management
- 2 – Modify foyer/entry walls and doorways
- 3 – Modify and relocate support columns to structural requirements
- 4 – Relocate carpark and kitchen exhaust

### **LEVEL 1 (Drawing 03 – REV D)**

- 1 – Relocate carpark and kitchen exhaust
- 2 – Modify external doors and walls between courtyards and foyer
- 3 – Modify entry/laundry area in apartment 101 and 102
- 4 – Install glass louvres to existing western foyer opening

### **LEVEL 2 (Drawing 04 – REV D)**

- 1 – Combine and reconfigure two units into one 3-bedroom unit
- 2 – Relocate carpark and kitchen exhaust
- 3 – Extend foyer, add fire rated spandrels and glass louvres
- 4 – New fire rated spandrel to western balconies
- 5 – Install glass louvres to existing western foyer opening

### **LEVEL 3 (Drawing 05 – REV D)**

- 1 – Relocate carpark and kitchen exhaust
- 2 – Modify entry/laundry area in apartment 301 and 302
- 3 – Install glass louvres to existing western foyer opening
- 4 – New fire rated spandrel to western balconies
- 5 – Extend foyer, add fire rated spandrels and glass louvres

### **LEVEL 4 (Drawing 06 – REV D)**

- 1 – Relocate carpark and kitchen exhaust
- 2 – Modify entry/laundry area in apartment 401 and 402
- 3 – Install glass louvres to existing western foyer opening
- 4 – New fire rated spandrel to western balconies
- 5 – Extend foyer, add fire rated spandrels and glass louvres

**ROOF PLAN (Drawing 07 – REV D)**

- 1 – Relocate carpark and kitchen exhaust
- 2 – Relocate ductwork
- 3 - Modify roof and parapet wall to accommodate for modified and relocated ductwork
- 4 - Increase parapet height by 25mm

**SECTION AA (Drawing 08 – REV B)**

- 1 – Modify basement perimeter wall to structural requirements
- 2 – Modify and relocate support columns at ground level
- 3 - Combine and reconfigure two units into 3-bedroom unit on level 2
- 4 – Increase parapet height by 25mm

**CROSS SECTION BB (Drawing 09 – REV B)**

- 1 – Modify basement perimeter wall to structural requirements
- 2 – Modify and relocate support columns at ground level
- 3 – Modify foyer/entry walls and doorways on ground level
- 4 - Combine and reconfigure two units into 3-bedroom unit on level 2
- 5 – Increase parapet height by 25mm

**EAST ELEVATION (Whistler Street - Drawing 10 – REV C)**

- 1 – Modify street level façade and entry
- 2 - Increase parapet height by 25mm

**NORTH ELEVATION (Drawing 11 – REV C)**

- 1 – Modify external cladding along carpark and kitchen exhaust structure
- 2 – Modify opening to Level 2 Unit balcony
- 3 – Modify external cladding along level 4 bedrooms
- 4 – Add fire rated spandrel and glass louvres
- 5 – New fire rated spandrel to western balconies
- 6 - Increase parapet height by 25mm

**SOUTH ELEVATION (Drawing 12 – REV C)**

- 1 – Modify external cladding along lift structure
- 2 – Modify external cladding along level 4 bedrooms
- 3 – Add fire rated spandrels and glass louvres
- 4 – New fire rated spandrel to western balconies
- 5 - Increase parapet height by 25mm

**WEST ELEVATION (Drawing 13 – REV C)**

- 1 – New fire rated spandrel to western balconies
- 2 - Increase parapet height by 25mm
- 3 – Install glass louvres to existing western foyer opening
- 4 – Modify external cladding along carpark and kitchen exhaust structure
- 5 - Increase parapet height by 25mm

The application also proposes the modification of Condition DA1 to reflect the modified plans.

### **3.0 Section 4.56 of the Environmental Planning and Assessment Act 1979**

Section 4.56 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 Court and subject to and in accordance with the regulations, modify the 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*
  - (b) *it has notified the application in accordance with—*
    - (i) *the regulations, if the regulations so require, or*
    - (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*
  - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
  - (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (1A) *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 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).

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. 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 does not change;
- The external building appearance, envelope and volume as perceived from adjoining properties and the public domain are not significantly altered;
- The modifications will not significantly alter the 3-dimensional built form, amenity or streetscape outcomes achieved through approval of the original scheme.
- The FSR remains the same.

Undertaking an analysis of the proposed modifications in regard to the above principles it is found that the modifications will not significantly impact the built form or building envelope. The primary modifications occurring to the 3-dimensional built form include a minimal, 25mm increase to the roof parapet, the relocation of the garage and kitchen exhaust to the western façade of the building and minor modifications to the building facades which have no impact on the scale or building

footprint. Other than the modification of the street façade, all other modifications are barely visible from the street and thus have no impact on the streetscape or amenity of pedestrians.

The relocated garage and kitchen exhaust is located on the western façade, away from the public domain and has minimal impact on the amenity of adjoining properties. Other than minor modifications to the upper-level foyer areas, all other modifications are internal and contained within the approved building profile and have no impact on the public domain or adjoining properties.

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 4.56 of the Act. To that extent, Council can be satisfied that the development as modified represents substantially the same development as originally approved. Further, having given consideration to *the reasons given by the consent authority for the grant of the consent that is sought to be modified*, we are of the opinion that the modifications are appropriately dealt with by way of Section 4.56 of the Act.

#### **4.0 Manly Local Environmental Plan 2013**

Having assessed the development as modified against the relevant provisions of Manly Local Environmental Plan 2013 (MLEP) we advise that:

- In relation to clause 4.3 – Height of buildings of MLEP, we confirm that the roof parapet RL’s have been increased by 25mm to accommodate mechanical ventilation and maintaining catchment area to OSD.

It is noted that the approved building height breaches the 15-metre height control, however the minor increase of the parapet height has insignificant impact and upholds the height of buildings clause and its objectives. We note that the clause 4.6 variation provisions do not apply to an application made pursuant to S4.56 of the Act and to that extent an assessment as to the acceptability of the modifications sought must have regards to the objectives of the standard. In this regard we note:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Response: The height of the development remains mostly consistent with the approved building height and does not impact the bulk and scale of the development. The minor increase to the parapet height is insignificant and does not impact the streetscape character. The relocation of the garage and kitchen exhaust to the rear (western) façade of the building has no impact on the streetscape or public domain and it does not exceed the approved building height. This objective is satisfied.

*(b) to control the bulk and scale of buildings,*

Response: The bulk and scale of the building is not significantly altered with the minor increases in parapet height being insignificant as viewed from street level. The addition of the garage and kitchen exhaust to the western façade has minimal impact on the bulk and scale of the building and has no impact on the public domain. This objective is satisfied.

*(c) to minimise disruption to the following—*

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Response: The proposed modifications have minimal impact on surrounding views to foreshores and public spaces. This objective is satisfied.

*(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Response: The proposed modifications have minimal impact on solar access to surrounding properties and has no impact on solar access to the public domain. This objective is satisfied.

*(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Response: N/A

In this regard, the consent authority can be satisfied that the development, as modified, satisfies the objectives of the height of buildings standard.

Storey	Approved Floor Space Area	Proposed Floor Space Area
Ground	152m <sup>2</sup>	151m <sup>2</sup>
Level 1	160m <sup>2</sup>	160m <sup>2</sup>
Level 2	158m <sup>2</sup>	159m <sup>2</sup>
Level 3	158m <sup>2</sup>	158m <sup>2</sup>
Level 4	155m <sup>2</sup>	155m <sup>2</sup>
TOTAL	783m <sup>2</sup>	783m <sup>2</sup>

- In relation to clause 4.4 – Floor space ratio of MLEP we confirm that the proposal does not impact the overall total floor space and FSR. A minor increase is made to the floor space on level 2 due to the merging of the two units which is compensated by a minor decrease to the floor space on ground level.

*(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Response: Total floor space does not change and minor alterations to the floor space on ground and level 2 have no impact on the bulk and scale of the development.

*(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,*

Response: The minor alterations do not impact building density, footprint or landscaping.

*(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Response: No impact on the visual relationship with the surrounding area.

*(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Response: Minor modifications have no environmental impacts on the use 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.*

Response: No impact.

In this regard, the consent authority can be satisfied that the development, as modified, satisfies and complies with the objectives of the FSR standard.



## 5.0 Manly Development Control Plan

Having assessed the development as modified against the relevant provisions of Manly Development Control Plan we advise that:

- The approved height, bulk, scale and setbacks of the development are maintained with the works reflecting a general refinement in the detailing and buildability of the approved development.
- The modifications will not compromise the residential amenity or streetscape outcomes achieved through approval of the original scheme.
- The modifications do not compromise the approved landscape outcomes.
- The approved waste management and stormwater disposal arrangements are unaltered.
- Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings and consistent with the height and form of development anticipated on the site.

## 5.0 Conclusion

Council can be satisfied that the development as modified represents substantially the same development as originally approved. Further, having given consideration to *the reasons given by the consent authority for the grant of the consent that is sought to be modified*, we are of the opinion that the modifications are appropriately dealt with by way of Section 4.56 of the Act.

We note that the majority of modifications are contained wholly within the approved building footprint and envelope with particular care taken to maintain the building design, streetscape, public domain and residential amenity outcomes afforded through approval of the original proposal.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 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.