

20th June 2022

Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA2020/1732
Demolition and construction of a new dwelling house and swimming pool
1127 Barrenjoey Road, Palm Beach

1.0 Introduction

On 22nd March 2021 development consent DA2020/1732 was granted for demolition works and the construction of a new dwelling house and swimming pool on the subject allotment. This consent was subsequently modified involving a reduction in the extent of approved basement level excavation and a minor refinement to the internal layout of the cabana.

This Statement of Environmental Effects (SoEE) has been prepared in support of an application seeking a further refinement in the detailing of the application involving modifications to the approved fenestration/privacy treatments, modifications to the approved building materials and finishes, the deletion of the car stacker, a minor increase to the height of the approved front boundary fence and the modification of the approved landscape plan to reflect the architectural changes pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act).

As the modifications do not alter the previously approved land use, streetscape/foreshore scenic protection, residential amenity, stormwater disposal and flooding circumstances 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 Detail of Modifications Sought

The modifications seek a further refinement in the detailing of the application involving modifications to the approved fenestration/privacy treatments, modifications to the approved building materials and finishes, the deletion of the car stacker, a minor increase to the height of the approved front boundary fence and the modification of the approved landscape plan to reflect the architectural changes. The proposed built form changes are depicted on the following architectural plans, Revision A and B, dated 23/05/22 prepared by Tregale and Associates:

- DA-01 Rev A - Proposed Site Plan
- DA-02 Rev B - Proposed Lower Ground / Basement Floor Plan
- DA-03 Rev B - Proposed Ground Floor Plan (Entry Level)
- DA-04 Rev A - Proposed First Floor / Attic Level Floor Plan
- DA-05 Rev A - proposed Roof Plan
- DA 06 - Proposed Beachscape Elevation
- DA 07 Rev A - Elevation 1 - West Elevation
- DA 08 Rev A - Elevation 2 - North Elevation
- DA-09 Rev A - Elevation 3 - East Elevation
- DA-10 Rev A - Elevation 4 - South Elevation
- DA-11 Rev B - Section / Elevation 5 – East Elevation (Facing Pool Pavilion)
- DA-12 Rev B - Section / Elevation 6 – West Elevation (Facing Front Pavilion)
- DA-13 Rev A - Section A-A
- DA-14 Rev A - Section B-B
- DA-15 Rev B - Section C-C

Specifically, the application proposes the following Architectural modifications:

- Deletion of the car stacker
- Deletion of the externally mounted white powder coated aluminium adjustable louvre shutter to North Facing Window W3-5 (dining area) and replace with BASIX compliant external roller blind (Colour Charcoal Grey) to match adjacent blind W3-6
- Deletion of the externally mounted white powder coated aluminium adjustable louvre shutter to North Facing Window W5-5 (Bed 1) and replace with BASIX compliant external roller blind (Colour Charcoal Grey)
- Deletion of the externally mounted white powder coated aluminium adjustable louvre shutter to East Facing Window W4-7 (Bed 5) and replace with BASIX compliant external roller blind (Colour Charcoal Grey)
- Deletion of the Bi-Fold door to D3-1 and replace with sliding doors – no change to opening size
- Reduction in the width of glass breezeway louvre windows W4-3 & W4-5 to link bridge and correspondingly increase width of central fixed window W4-4

- Change configuration of Bed 5 South facing windows W4-8 & W4-9 from 900w x 900w to become 500w x 1600h
- Change configuration of powder coated aluminium fixed horizontal privacy screens to the same bed 5 windows (W4-8 & W4-9) to suit.
- Deletion of the white powder coated aluminium louvre privacy screen to south external staircase and replace with a weathered hardwood horizontal batten privacy screen
- Deletion of painted timber fascias and replace with Patina Grey Aluminium
- Deletion of Standing Seam Weathered Zinc roof & replace with Standing Seam Patina Grey Aluminium Roof
- Change garage door from Panel Lift Door to Sliding Door (vertical weathered timber battens remain)
- Change weathered HW vertical shiplap boarding on main front (street) elevation to be weathered hardwood horizontal weatherboarding
- Minor adjustment (16-30mm only) to selected internal finished floor levels to achieve consistency in stair tread heights
- Amendment to DA Condition 22 (External Finishes and Colours) to remove the requirement that a mid-tone, equivalent or darker to Colorbond Windspray is to be used on all external weatherboards, masonry, cladding, shutters and screens. Condition to be amended to permit all of these elements to be a Dulux Natural White.
- Change colour of rendered masonry walls at base of building from Dulux Coastal Drift (Dulux CB Windspray) to Dulux Natural White
- An increase in the height of front boundary street fence to be 1.8 metres

The application also proposes minor changes to the approved landscape regime as depicted on the accompanying plans 1 – 4 Issue F prepared by Paul Scrivener Landscape with these plans nominating an increase in the height of the front fence to 1.8 metres and the provision of a grass cell parking space at the front of the property.

The amended schedule of finishes is included on the accompanying plan prepared by Craig and Co. Interior Design. The application is also accompanied by an updated BASIX Certificate.

Condition 1 of the consent will need to be modified to reference the modified plans and documentation with Condition 22 amended to reflect the modified schedule of materials and finishes.

3.0 Section 4.55(1A) 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 modifications reduce environmental impact through a further reduction in required excavation.

The 3 dimensional form of the approved dwelling house is otherwise unaltered with the approved streetscape/ foreshore scenic protection, residential amenity, stormwater disposal, flooding and landscape regimes not compromised. The modifications sought are, in our opinion, 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, setbacks and envelope are not altered with the residential amenity outcomes in terms of solar access, privacy and view sharing not compromised. The modified colours and materials proposed will ensure that the development displays a form, colour and materiality consistent with that established by adjoining development and development generally within the site’s visual catchment.

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 not altered; and
- The modifications maintain the previously approved environmental outcomes in terms of residential amenity, flooding, landscaping and streetscape/foreshore 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 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15 of the Act:

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

Pittwater Local Environmental Plan 2014

Height of Buildings

Pursuant to the height of buildings map, the site has a maximum building height limit of 8.5 metres. The approved building height is not altered as a consequence of the modifications sought with all modified works sitting comfortably below the height standard.

Earthworks

Excavation has been reduced and to that extent we rely on the Geotechnical Risk Assessment prepared by Geo-Logix in support of the previous applications.

Flood planning

The previously approved floor levels and flood planning outcomes are maintained.

Limited Development on Foreshore Area

Pursuant to clause 7.8(2) of PLEP 2014 Development consent must not be granted for development on land in the foreshore area except for the following purposes –

- (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The proposed modifications do not alter the approved development's relationship with the foreshore area and to that extent these provisions are satisfied.

Pittwater 21 Development Control Plan

Having assessed the modified development against the applicable provision of Pittwater 21 Development Control Plan we note the following.

- The siting, scale, form and massing of the development is not materially altered with the modified proposal maintaining the previously approved building height, setbacks and spatial relationship with adjoining development,
- The modified proposal will not give rise to any adverse public or private view affectation,
- Clause B6.3 of the DCP states that 2 off-street carparking spaces are to be provided for the dwelling. The original consent approved a car stacker within the garage to achieve 2 spaces. The car stacker is proposed to be deleted with this modification application with a second car space available in tandem on the driveway which will allow the development to achieve 2 off-street car spaces in compliance with the control,
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development through approval of the original application in relation to views or solar access. The modifications proposed to the dwelling do not raise any additional adverse impacts with regard to acoustic or visual privacy. Modifications to windows and doors are minor and will not alter the relationship with adjoining properties with regard to privacy outcomes.
- Clause D12.3 provides guidance as to the materials and finishes anticipated for the Palm Beach Locality. The clause states that external colours and materials should be of dark earthy tones.

The modification proposes lighter colour materials and finishes which are considered appropriate in this waterfront location. In conducting further analysis of residential development in this location it is clear that lighter colours and finishes are a dominant feature of the area. A photomontage (Figure 1 over page) has been prepared to give context of the proposal in relation to the surrounding development.

The image below clearly demonstrates that the colours and materials proposed are complimentary and compatible with those established by surrounding development, including the heritage listed Barrenjoey House to the north of the development site, with the dwelling house not being perceived as inappropriate or jarring in its context.

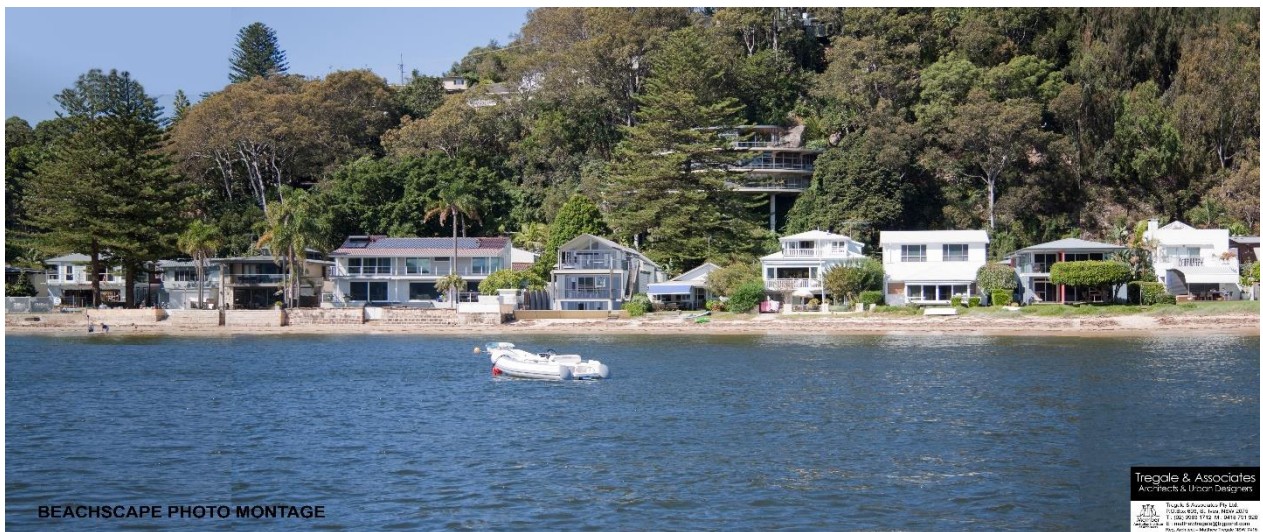


Figure 1: Photomontage of existing colours and finishes of surrounding development.

The colours and finished will incorporate lighter earthy tones into the colour palate to provide visual interest and soften any perceived visual impacts. 3D perspectives have been provided of the front and rear facades to demonstrate this point.



Figure 2: Rear Façade



Figure 3: Front façade

- The modified colours and materials proposed will ensure that the development displays a form, colour and materiality consistent with that established by adjoining development and development generally within the site's visual catchment.

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 modifications will not alter the 3-dimensional built form circumstance of the development and will not compromise the residential amenity or streetscape/foreshore scenic protection outcomes achieved through approval of the original scheme.

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 additional height to the front fencing is consistent with the height of fencing established along this section of Barrenjoey Road and to that extent will not give rise to any inappropriate or jarring streetscape outcomes.

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?*

This report demonstrates that the development will continue to provide appropriately for off-street parking.

Public domain

No change.

Economic impact in the locality

No change to approved outcome.

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 will not materially alter the 3-dimensional built form circumstance and residential amenity outcomes achieved through approval of the original scheme.

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 modifications will be able comply with the provisions of the Building Code of Australia without difficulty. 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 site is suitable for the development.

Are the site attributes conducive to development?

The site 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.

The development is consistent with the adopted planning regime. The modifications will not materially alter the 3-dimensional built form, streetscape, landscaping or residential amenity outcomes achieved through approval of the original scheme. Approval would not be antipathetic to the public interest.

5.0 Conclusion

This application seeks a further refinement in the detailing of the application involving modifications to the approved fenestration/privacy treatments, modifications to the approved building materials and finishes, the deletion of the car stacker, a minor increase to the height of the approved front boundary fence and the modification of the approved landscape plan to reflect the architectural changes.

The modified colours and materials proposed will ensure that the development displays a form, colour and materiality consistent with that established by adjoining development and development generally within the site's visual catchment. As the modifications do not alter the previously approved land use, streetscape/ foreshore scenic protection, residential amenity, stormwater disposal and flooding circumstances 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 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 a modified consent.

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD

A handwritten signature in black ink, appearing to read 'Greg Boston', with a stylized flourish at the end.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director