

5<sup>th</sup> September 2021

The General Manager  
Northern Beaches Council  
Po Box 82  
Manly NSW 1655

Dear Sir,

**Statement of Environmental Effects**  
**Section 4.55(1A) Modification of Consent DA2019/1072**  
**Demolition and Construction of a Seniors Housing Development**  
**1795 and 1797 Pittwater Road and No. 38 Park Street, Mona Vale**

**1.0 Introduction**

On 9<sup>th</sup> July 2020, development consent DA2019/1072 was granted for demolition works and the construction of a senior's housing development on the subject properties.

The adjoining property at No. 1793 Pittwater Road was subsequently secured with a development application seeking to consolidate all 4 sites to facilitate the construction of an additional 6 seniors housing dwellings with basement parking on the consolidated allotment submitted to and approved by Council on 10<sup>th</sup> February 2021 (DA2020/1179). We note that this subsequent development consent detailed the consolidated built form and land use outcome across all 4 sites and to that extent effectively became the "Parent" consent as it related to the development approvals for the consolidated allotment.

To enable the development consents to be dealt with concurrently, and to remove unnecessary duplication of conditions, the Private Certifying Authority (PCA) has identified a number of conditions that need to be deleted/modified to facilitate such outcome.

This application is made pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act).

In this regard, the application seeks the deletion of Conditions 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and their replacement with the following condition:

*An Occupation Certificate cannot be issued until the Occupation Certificate for Development Consent DA2020/1179 has been issued.*

The application also seeks the deletion of Condition 23 to ensure consistency between the development consents as they relate to tree protection.

As the modifications do not alter the previously approved land use or built form circumstances across the consolidated development site 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 deletion of Conditions 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and their replacement with the following condition:

*An Occupation Certificate cannot be issued until the Occupation Certificate for Development Consent DA2020/1179 has been issued.*

The application also seeks the deletion of Condition 23 to ensure consistency between the development consents as they relate to tree protection.

## **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 land use and built form circumstances are unaltered. The modifications proposed to the conditions of consent enable the development consents issued across the consolidated allotment to be dealt with concurrently by way of a single Construction Certificate the Private Certifying Authority (PCA). There are no environmental consequences associated with the modifications sought. The modifications to the wording of conditions 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 land use and built form circumstances are unaltered with the environmental outcomes associated with the original approval 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 senior’s housing on the subject properties,
- The previously approved land use and built form circumstances are maintained, and
- The modifications do not compromise the previously approved environmental outcomes.

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 Pittwater Local Environmental Plan 2014**

##### **Zoning and permissibility**

The development remains permissible with consent pursuant to SEPP HSPD.

##### **Height of buildings**

The previously approved built form circumstance is unaltered.

#### **5.0 Pittwater 21 Development Control Plan**

The modifications do not compromise the developments performance when assessed against the applicable DCP provisions.

## 6.0 Conclusion

On 9<sup>th</sup> July 2020, development consent DA2019/1072 was granted for demolition works and the construction of a senior's housing development on the subject.

The adjoining property at No. 1793 Pittwater Road was subsequently secured with a development application seeking to consolidate all 4 sites to facilitate the construction of an additional 6 seniors housing dwellings with basement parking on the consolidated allotment submitted to and approved by Council on 10<sup>th</sup> February 2021 (DA2020/1179). We note that this subsequent development consent detailed the consolidated built form and land use outcome across all 4 sites and to that extent effectively became the "Parent" consent as it related to the development approvals for the consolidated allotment.

To enable the development consents to be dealt with concurrently, and to remove unnecessary duplication of conditions, the Private Certifying Authority (PCA) has identified a number of conditions that need to be deleted/modified to facilitate such outcome. In this regard, the application seeks the deletion of Conditions 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and their replacement with the following condition:

*An Occupation Certificate cannot be issued until the Occupation Certificate for Development Consent DA2020/1179 has been issued.*

The application also seeks the deletion of Condition 23 to ensure consistency between the development consents as they relate to tree protection.

As the modifications do not alter the previously approved land use or built form circumstances across the consolidated development site 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**