

5th October 2020

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

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA2019/0239
Demolition works and construction of a mixed-use development
638 Pittwater Road, Brookvale

1.0 Introduction

On 15th April 2020 development consent DA2019/0239 was granted approval for the demolition of the existing site structures and the construction of a mixed-use development on the subject allotment.

We have been engaged to prepare an application to modify the consent pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the modifications sought introduce storage mezzanines into the approved commercial spaces and provide for an adjustment to the approved car parking numbers and arrangement to accommodate required fire service areas and storage.

The modifications are contained wholly within the approved building envelope such that the 3-dimensional form, streetscape appearance, drainage and landscape outcomes as approved are not compromised. Whilst the proposal results in a reduction in the total number of approved parking spaces from 157 to 152, the total quantum remains well above the minimum requirement of 106 spaces for the overall development (Note: Condition 82 of the consent incorrectly refers to 159 approved car parking spaces).

Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes.

To that extent 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 Section 4.55(1A) of the Act.

2.0 Detail of Modifications Sought

Architectural plan modifications

The proposed modifications are shown coloured on plans A02A, A03A, A04A and A11A, and A19 prepared by Barry Rush and Associates with the modifications summarised as follows:

Basement Level B3

- The provision of an additional car parking space increasing the total number of parking spaces at this level from 64 to 65.

Basement Level B2

- The provision of an additional car parking space increasing the total number of parking spaces at this level from 58 to 59.

Basement Level B1

- A reduction of 6 car parking space reducing the total number of parking spaces at this level from 35 to 28. These spaces are proposed to be used for a sprinkler control valve room, car parking exhaust plant room, additional fire stair and storage. A car park supply plant room and MSB & Comms Room are also provided to the east of Lift 3.

These carparking changes result in a reduction in overall approved parking spaces from 157 to 152.

Mezzanine Floor Plan

- The provision of mezzanine storage areas to each of the approved commercial spaces including those associated with the approved SOHO apartments.

Condition modifications

The application also seeks the modification of the following conditions:

Condition 1 – This condition is to be modified to reflect the modified plans.

Condition 82 – This condition needs to be modified to reflect the modified carparking numbers noting that this condition as imposed incorrectly referred to there being 86 residential spaces and a total of 159 car parking spaces where in fact there were only 84 resident spaces and a total of 157 car parking spaces depicted on the stamped approved Architectural plans. Accordingly, we request that the condition be modified to read as follows:

Allocation of Spaces

~~159~~ 152 car parking spaces shall be provided, made accessible, and maintained, at all times (unless they must be removed to comply with the condition requiring vehicle access to No. 640 Pittwater Road). The spaces shall be allocated as follows:

- ~~88~~ 87 - Residential (Including spaces for persons with a disability)*
- 9 - Residential - Visitors (Including spaces for persons with a disability)*
- ~~62~~ 56 - Commercial/retail including customer parking (Including spaces for persons with a disability)*

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Condition 85 – This condition needs to be modified to reflect the modified number of surplus parking spaces. Accordingly, based on a required total quantum of 106 car spaces, we request that the condition be modified to read as follows:

Surplus Parking Spaces

The ~~46~~ 53 surplus car parking spaces must not be allocated to any of the proposed apartments or retail tenancies.

They may be used for visitor/customer parking prior to any redevelopment of the site but must be available to be reallocated when an application for the redevelopment of the site is lodged (i.e. any application to add additional apartments).

Reason: To ensure the site is suitably developed in the future and adequate car parking is provided.

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 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 with the design quality of the development maintained. The modifications are both quantitatively and qualitatively of minimal environmental impact with surplus car parking numbers maintained.

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 confirm 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 shop top housing development,
- The previously approved residential and commercial densities are maintained as are building heights, setbacks and footprint, and

- The modifications maintain the previously approved environmental outcomes in terms of residential amenity, design quality 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 Warringah Local Environmental Plan 2013

Zoning and permissibility

The subject property is zoned B5 Business Development pursuant to Warringah Local Environmental Plan 2011 (“WLEP 2011”) with shop top housing permissible in the zone. Accordingly, the modifications sought to the previously approved development are also permissible.

Height of Buildings

Pursuant to clause 4.3 of WLEP 2011 the maximum building height for development on the land is 11 metres. We confirm that the previously approved maximum building height is not altered.

Earthworks

Having regard to the clause 6.2 of WLEP 2011 provisions we confirm that no additional excavation is proposed considerations no additional excavation is proposed beyond that identified in the approved Geotechnical Assessment Report prepared by JK Geotechnics.

Development on Sloping Land

Having regard to the clause 6.4 of WLEP 2011 the site is mapped as falling within a Land Slip Risk Area A. In this regard, we note that the proposed development does not involve any additional excavation and accordingly we rely on the previously endorsed geotechnical report prepared by Morrow Geotechnics Pty Limited.

5.0 Warringah Development Control Plan 2011

Having assessed the modified development against the applicable provision of WDCP we note the following:

- The siting, scale, form and massing of the development is not 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,
- The previously approved waste storage and collection arrangements are maintained,
- A surplus of on-site car parking spaces is maintained,
- The modified proposal does not compromise the amenity outcomes and future development opportunities afforded to adjoining development,
- The building will continue to comply with the applicable accessibility legislation,
- The previously approved landscape regime is unaltered
- The previously approved acoustic outcomes are maintained,
- The previously approved stormwater drainage regime is not altered as a consequence of the modifications sought; and
- The modifications do not trigger the need for an updated BASIX certificate.

6.0 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development/ Apartment Design Guide

Given the minor nature of the modifications sought the developments performance when assessed against State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide (ADG) is not compromised.

7.0 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(1) of the Environmental Planning and Assessment Act 1979(as amended):

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

The developments performance when assessed against the relevant statutory planning regime is not compromised as detailed within this report.

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 sought are contained wholly within the approved building envelope with the 3 dimensional form, streetscape appearance and landscape outcomes as approved not compromised as consequence of the modifications sought.

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 approved development will remain, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion as originally approved in terms of view sharing, height, boundary setbacks, privacy and landscape 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?*

The proposal maintains a surplus of off-street car parking as detailed within this report.

Public domain

There are no public domain changes.

Economic impact in the locality

The proposed development will provide short term employment opportunities during construction.

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 sought are contained wholly within the approved building envelope with the 3 dimensional form, streetscape appearance and landscape outcomes as approved not compromised as consequence of the modifications sought.

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 development will comply with the provisions of the Building Code of Australia. 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 adjacent development does not impose any insurmountable development constraints. No additional excavation is required to accommodate the proposed modifications. The site is well located with regards to utility services and public transport. There will be no excessive levels of transport demand created.

Are the site attributes conducive to development?

The site has no special physical or engineering constraints and 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.

It is considered that the development will result in a significant addition of good design to the locality. The development is consistent with the adopted planning regime.

8.0 Conclusion

The modifications introduce storage mezzanines into the approved commercial spaces and provide for an adjustment to the approved car parking numbers and arrangement to accommodate required fire service areas and storage

The modifications are contained wholly within the approved building envelope such that the 3-dimensional form, streetscape appearance, drainage and landscape outcomes as approved are not compromised. Whilst the proposal results in a reduction in the total number of approved parking spaces from 157 to 152, the total quantum remains well above the minimum requirement of 106 spaces for the overall development.

Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible streetscape presentation and appropriate residential amenity outcomes.

To that extent 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 Section 4.55(1A) of the Act.

Having given due consideration to the relevant considerations pursuant to s4.15(1) 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.

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD

A handwritten signature in black ink, appearing to read 'Greg Boston', written over a horizontal line.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director