

4.55(8) MODIFICATION

Address: No. 54 Bardo Road, Newport

Proposal: Seniors Housing

OCTOBER 2021

No. 138 Woorarra Avenue
ELANORA HEIGHTS
NSW 2101 AUSTRALIA

p: (02) 9970 7214
e: daniel@dmps.com.au
w: dmps.com.au

21 October 2021

ABN: 78 176 118 998

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The Land and Environment Court of NSW
Level 4, No. 225 Macquarie Street
SYDNEY NSW 2000

STATEMENT OF ENVIRONMENTAL EFFECTS

SECTION 4.55(8) MODIFICATION TO DA2020/1172 NO. 54 BARDO ROAD, NEWPORT

Dear Sir/Madam,

Application is made, pursuant to Section 4.55(8) of the Environmental Planning and Assessment Act 1979 (EPAA), for modification of the consent issued by the NSW Land and Environment Court.

This modification seeks approval for amending the footprint and setbacks of Units G03 & G04, and roof form of the development.

Approval is also sought for the modification of Condition No. 32 of the development consent.

The Statement of Environmental Effects has been prepared with reference to the following documentation:

- Architectural Plans + Schedule of Amendments
- BASIX Certificate
- Landscape Plan
- National Construction Code Report
- Accessibility Cover Letter (ABE Consulting)
- Traffic Statement

Background

Applicant: BPG Holdings (No. 5) Pty Ltd
C/- dmpps
No. 138 Woorarra Avenue
ELANORA HEIGHTS NSW 2101

Site: Lot 42 Section 2 DP 4689
No. 54 Bardo Road, Newport

Local Government Area: Northern Beaches Council

Approved Development: Demolition works and construction of a seniors housing development to accommodate six units including associated car parking and landscape works

Reference: Development Application No. DA2020/1172
Refusal issued 7 April 2021

Land and Environment Court Appeal No. 2020/349112
Consent issued 18 June 2021

Proposed Modification

Section 4.55(8) of the EPAA enables the Court to consider modifications to development consents granted by the Court:

The provisions of this section extend, subject to the regulations, to enable the Court to modify a consent granted by it but, in the extension of those provisions, the functions imposed on a consent authority under subsection (1A)(c) or subsection (2)(b) and (c) are to be exercised by the relevant consent authority and not the Court.

The proposed modification would otherwise need to satisfy Section 4.55(2) of the EPAA:

(2) 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) 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*
- (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.*

All proposed modifications have been clearly bubbled on the architectural plans and are detailed in the attached schedule of amendments prepared by the project architect. The modification also seeks to amend Condition No. 32 of the development consent which relates to the construction of

a pedestrian refuge, which is sought to be removed, and to alternatively provide kerb ramps to enable safe road crossing.

Impact of Proposed Modifications

It is understood that Section 4.56(1A) of the EPAA is relevant in the determination of this application, which requires the consent authority to 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 *BPG Holdings (No. 5) Pty Limited v Northern Beaches Council* [2021] NSWLEC 1357, it is noted that an agreement was reached between the parties under Section 34(3) of the Land and Environment Court Act 1979, subject to leave being granted to rely on amendments, and that decision was endorsed by the Commissioner Bradbury AC.

Tree Protection

Amendments to the development through conciliation made retention of additional mature trees on the site viable, including design changes to adjust the driveway ramp slope into the basement, and modifications to the walkway accessing the units to suspend the timber decking.

The proposed modifications will have no impact on the viability for retention of these trees, with the building footprint adjacent these trees remaining consistent with the approved plans.

Floor Space Ratio

The proposed modifications result in an increase in gross floor area (GFA) of the development and therefore an increase in the total floor space ratio (FSR). The approved development has a GFA of 692.2m² and an FSR of 0.564:1:1, and the proposed modifications result in a GFA of 712.24m² and a resultant FSR of 0.58:1.

The SEPP prescribes that development consent cannot be refused on the basis of density and scale if the FSR is 0.5:1 or less:

50 Standards that cannot be used to refuse development consent for self-contained dwellings

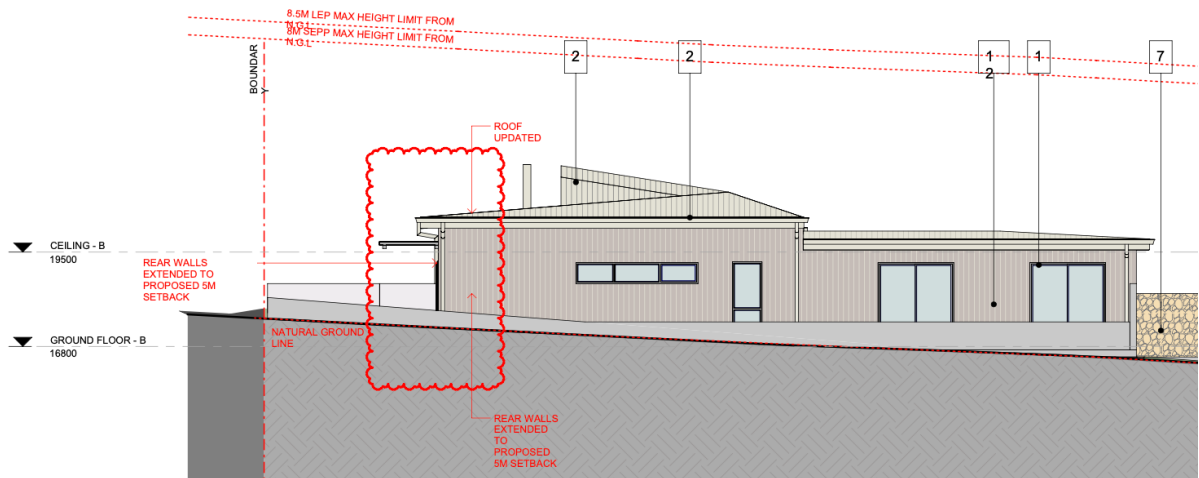
A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds—

*(b) **density and scale:** if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,*

We note a maximum FSR is not prescribed by the Pittwater Local Environmental Plan 2014. As such, adjoining development within the zone is able to exceed this standard, subject to compliance with other built form controls relating to building height, setbacks and landscaping, and subject to consistency of a development with the zone objectives.

The increase in floor space will not be apparent from the public domain, as the additions are at the rear of the site, and are single storey in nature. The minor 20.04m² (2.9%) increase in GFA proposed

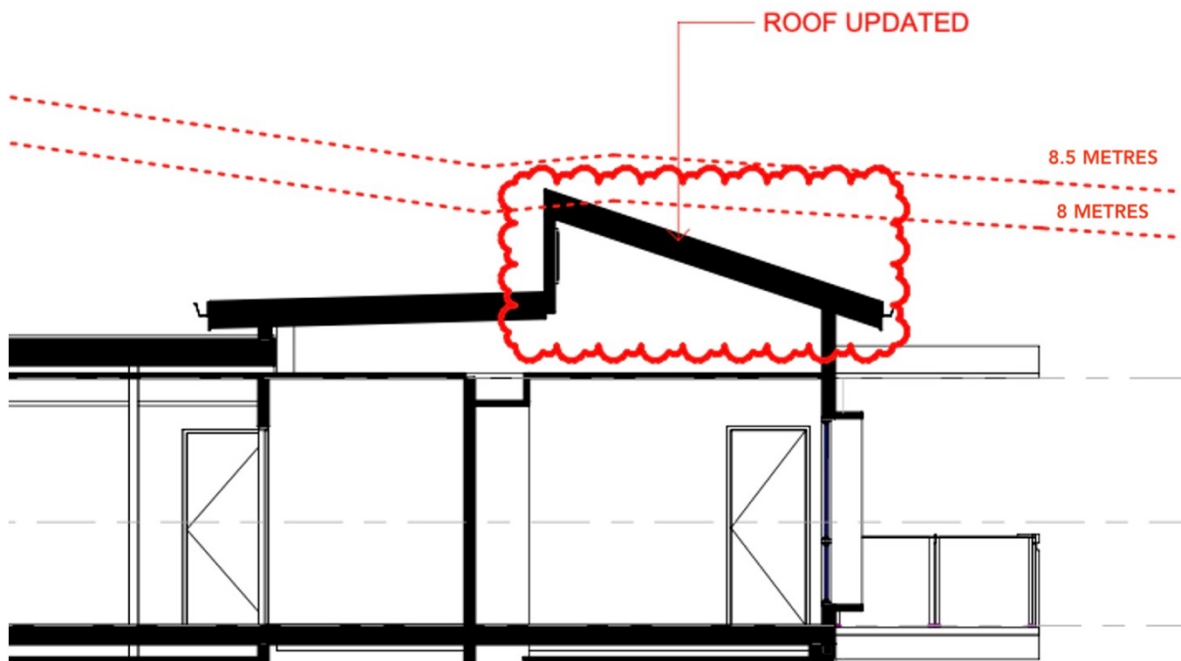
by the modifications will not result in any significant additional overshadowing or privacy impacts, as the modification is single storey in nature.

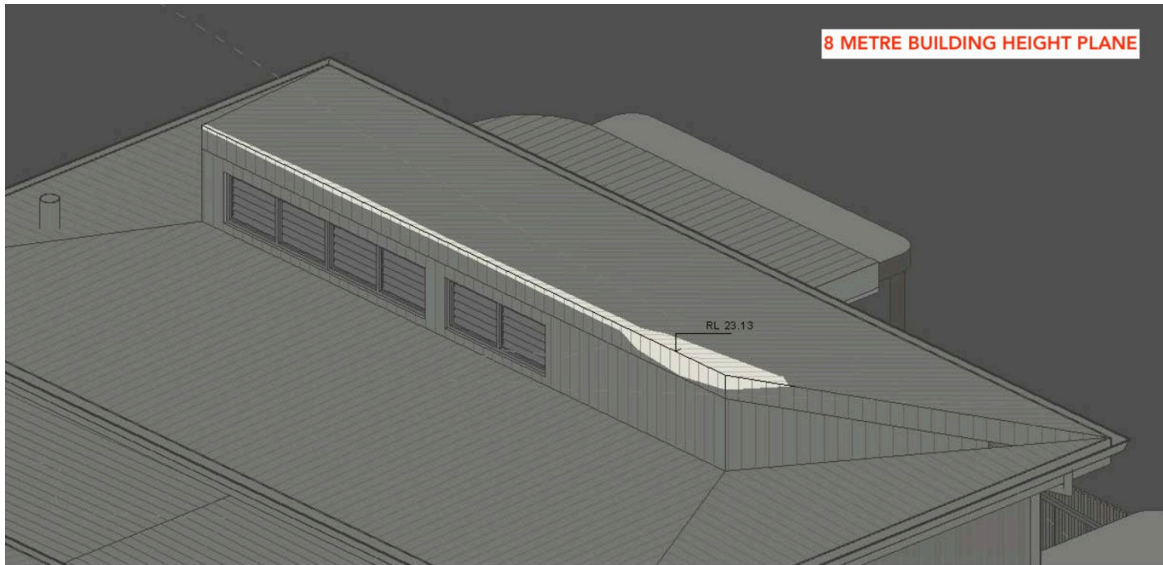


Building Height

The proposed modifications result in minor amendments to the roof form of the development, which results in a minor breach to the maximum 8 metre maximum building height prescribed by State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The proposed maximum height of building with the amended roof form is 8.255 metres. The Commissioner noted in acceptance of the conciliated outcome between the parties that:

The proposed development complies with the applicable development standard in the LEP relating to building height (cl 4.3). The height of the proposed development is 7.5 metres which is less than the applicable maximum building height of 8.5 metres.





Clause 40 of The SEPP prescribes that in zones where residential flat buildings are prohibited, the height of all buildings in the proposed development must be 8 metres or less, must not be more than 2 storeys in height, and that any building located in the rear 25% of the site must not exceed 1 storey in height.

The proposed height exceedance represents a 3% variation to this development standard, and is noted to be consistent with the maximum building height prescribed by the Pittwater Local Environmental Plan 2014 (the LEP), which is 8.5 metres.

Modifications to the roof form significantly increase daylight and solar access available to the living area of Unit 101, and will improve amenity outcomes for this dwelling.

This localised increase to building height results in minor increases only in overshadowing, however, there are no overshadowing impacts upon neighbouring properties, nor their private open space (see shadow diagrams in architectural plans).

The proposed height exceedance is as a result of the modified roof form which remains compatible with the scale of surrounding and nearby development.

Landscaped area

The proposed modifications do not result in any changes to the total landscaped area.

Deep Soil Zone

The proposed modifications result in no changes to deep soil available upon the site.

Biodiversity

The land is identified as "Biodiversity" on the Biodiversity Map in the LEP, however, no additional vegetation will be disturbed by the proposed modifications to the proposal.

Acid Sulfate Soils

The proposed modifications propose no change to approved excavation upon the site.

Setbacks

The proposed modification results in the rear setback being reduced from 6.5 metres to 5 metres. The reduced setback relates only to the single storey component of the approved building.

It is noted that rear setbacks are established by Part D10.8 Side and rear building line (excluding Newport Commercial Centre) of the Pittwater Development Control Plan 21 (the DCP), and that the SEPP otherwise allows development at the rear of a property as long as it is limited to single storey.

This section of the DCP relates rear setback controls for various types of development located within the R2 Low Density Residential Zone.

It is noted that Part D10.8 of the DCP requires a 6.5 metre rear setback for development within the R2 Low Density Residential Zone. Despite not strictly complying with the numerical controls established in the DCP, the modifications are consistent with achieving the desired outcomes of the control, which are as follows:

- *To achieve the desired future character of the Locality.*
- *The bulk and scale of the built form is minimised.*
- *Equitable preservation of views and vistas to and/or from public/private places.*
- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*
- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*
- *Flexibility in the siting of buildings and access.*
- *Vegetation is retained and enhanced to visually reduce the built form.*
- *To ensure a landscaped buffer between commercial and residential zones is established.*

It is noted the proposed modification has a negligible impact on overshadowing of the neighbouring properties.

As the proposed modified rear setback enables retention of the deep soil area within the rear of the site, there is no change to the volume of landscaping proposed. This will ensure that the level of privacy and amenity is maintained to the dwelling which adjoins the rear boundary, and that vegetation is retained to visually reduce the built form of the development.

There are multiple examples in the immediate locality of structures being located within the rear 6.5 metre setback, including on the neighbouring site at No. 52 Bardo Road, which has a large single storey structure within approximately 4 metres of the rear boundary, extending the length of the site – see images over page.

The modification relates to Units G03 & G04 only which are single storey in nature. As such, the proposed modified setback is consistent with development in the street. The rear setback proposed by the modification is considered to be compatible with existing development in the immediate locality.



Accessibility and Traffic Impacts

The proposed modification seeks to remove the requirement for a suggested pedestrian refuge island between the driveway No. 54 and 56 Bardo Road, and alternatively seeks construction of kerb ramps adjacent the roundabout at the King Street intersection.

Bardo Road is not wide enough to accommodate a pedestrian refuge island. A Traffic Statement has been prepared in support of this modification and concludes as follows:

According to the survey plan (appendix A) Bardo Road width between kerbs is 8.1m while the minimum requirements to provide a pedestrian refuge according to TfNSW is 10.4m as per technical direction TDT 2001/01 (appendix B). Consequently, pedestrian refuge island can't be provided in Bardo Road.

A kerb ramp will be constructed at the King Street intersection in lieu of the pedestrian refuge to provide an access pathway for residents.

The pedestrian refuge island was included as a condition of development consent to provide a convenient and safe pedestrian access to the designated bus stops for the seniors and people with disabilities.

See attached access cover letter prepared by ABE Consulting which demonstrates the alternative proposition has the continued ability to comply with the accessibility requirements of the SEPP. This correspondence suggests:

ABE Consulting note that the existing pedestrian footpath provided on the same side as the subject site for residents of the area can be used for access to the bus stop on Gladstone St as per SEPP (HSPD) 2004 (underlined below).

(a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like...

Kerb ramps (Pg. 2 extract) will need to be constructed at the King St intersection in lieu of the pedestrian refuge.

It is therefore requested that Condition No. 32 of the development consent be modified to reflect these alternate kerb ramp arrangements.

Threshold Test

A concurrent application has been made to Northern Beaches Council pursuant to Section 4.56(1) of the EPAA to modify the development consent. This application proposes a large number of minor amendments to the Court approved development, including amendments to the basement location, landscaping, minor modifications to the internal layouts of units, amended roof forms and external finishes.

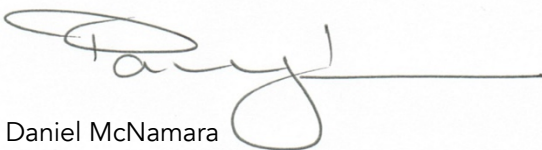
Taking into consideration modifications in this concurrent application, and the modifications proposed herein, it is considered the proposal remains substantially the same development as that approved by Development Application No DA2020/1172, being for demolition works and construction of a seniors housing development to accommodate six units including associated car parking and landscape works.

Conclusion

The proposed modifications have a minimal environmental impact.

The development to which the consent as modified relates is otherwise substantially the same development as that for which the consent was originally granted.

Yours sincerely



Daniel McNamara
Director