

30th July 2021

The General Manager
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Dear Sir,

**Statement of Environmental Effects
Modification of Development Consent DA2011/0360
Alterations and additions to an existing residential flat building
48a Queenscliff Road, Queenscliff**

1.0 Introduction

On 12th September 2011, Development Consent DA2011/0360 was granted for alterations and additions to the existing residential flat building located on the subject allotment.

The development consent has subsequently been modified four (4) times the most recent of which was Mod2020/0572 involving the regularization of an as-built tiered landscaped terrace area at the southwest side of the building with planting and mechanical ventilation exhaust stack on the northern side of the building above the basement parking area, the removal of a pedestrian path along the southern portion of the western boundary and changes to the fire sprinkler system. The following condition was imposed by the Development Determination Panel (DDP) in its determination of 2nd March 2021:

1D(c) All landscaping depicted in these modification architectural plans (all dated 28/10/2020) contained within this condition, is to be deleted and does not form part of the consent. Landscaping to be undertaken in accordance with the original landscape plans. In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

The reasoning behind for the imposition of this condition was expanded upon within the DDP minutes as follows:

The Panel does not concur with the assessment report, or supplementary memo in regards to the impact from the proposed landscaping. The impacts are such that this could not be considered to be within the parameters of a Modification under Section 4.55 (1A) as involving minimal environmental impact.

The Panel considers that the impact of the landscape terracing, and raised levels of landscaping, are unacceptable in relation to visual impacts, view loss, light and amenity to the adjoining properties. In this regard the landscape plans and references to the landscaping in the architectural plans are to be removed from the approval.

These issues were raised previously in the original determination. The landscaping plans were amended to remove the raised landscaped areas, in order to lessen the impacts on adjoining properties. The original approved landscape plans did not contain any detail which indicated changes to the existing ground levels. In this regard the approved landscaping should be installed at the ground levels prior to construction.

From a review of photographs taken during the construction process, and our own observations on site, it is clearly evident the landscaping approved in the south western corner of the site was unable to be implemented due to the presence of bedrock with the creation of terraced planter beds and the importation of soil the only viable option to enable the establishment of any form of landscaping on this portion of the site. Further, the approved pathway located on the boundary in this location would, if constructed, result in unnecessary impacts on the amenity of the adjacent apartments at No. 1A Greycliffe Street in terms of privacy and view affectation noting that a 1 metre high balustrade would need to be constructed on the boundary to prevent persons falling into the adjoining property.

The modified landscaping proposed in the south western corner of the site is depicted on the accompanying landscape plan and plant schedule prepared by Space Landscape Design. These plans collectively demonstrate that the intention of the original landscape regime is achieved, being the establishment of low level terraced landscaping in the south western corner of the site, with such landscaping not giving rise to unacceptable residential amenity impacts. That said, the landscape plans provide for a lowering of the “as built” terraced planter beds by between 100mm and 500mm as confirmed through a comparison of the levels nominated on the accompanying survey prepared by TSS Total Surveying Solutions and the levels nominated on the accompanying landscape plans.

This application, made pursuant to Section 4.55(2) of the Act, seeks to modify the approved landscaping located in the south-western corner of the site, including the deletion of the approved pathway in this location, with the design and detailing of the modified landscaping providing for the following environmental/ residential amenity outcomes:

- The modified landscape design will not give rise to any inappropriate or jarring visual impacts as viewed from any adjoining residential property or the adjacent public domain,
- The modified landscape design proposes plant species which at maturity will not impact existing public or private views,
- The modified landscape design proposes plant species which at maturity will not reduce existing levels of sunlight obtained by surrounding residential properties and will not cast shadow onto the adjacent public domain, and
- The modified landscape design removes the previously approved pathway and provides for a non-trafficable terraced landscaped area which will not be capable of being used, or adapted for use, as either private or communal open space and to that extent will not give rise to adverse visual or aural privacy impacts.

The modifications sought will not compromise the landscape quality, streetscape, foreshore scenic protection or residential amenity outcomes achieved through approval of the original landscape regime.

This submission demonstrates that the development as modified represents substantially the same development as that originally approved. Subject to Council undertaking the appropriate statutory notifications the application is appropriately dealt with by way of Section 4.55(2) of the Act.

The modifications have been found to be acceptable when assessed against the heads of consideration pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act, 1979, as amended and in our opinion, are appropriate for the granting of consent.

2.0 Detail of modifications sought

This application seeks to modify the landscaping approved in the south western corner of the site as depicted on the accompanying landscape plan and plant schedule prepared by Space Landscape Design copies of which are attached.

The landscape plans provide for a lowering of the “as built” terraced planter beds by between 100mm and 500mm as confirmed through a comparison of the levels nominated on the accompanying survey prepared by TSS Total Surveying Solutions and the levels nominated on the accompanying landscape plans.

This application also seeks the modification of Condition 1D(a) to reference the modified landscape plan and the deletion of Condition 1D(c).

3.0 Statutory Planning Considerations

3.1 Section 4.55(2) of the Environmental Planning and Assessment Act 1979

Section 4.55(2) of the Act provides that:

- (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 Court and subject to and in accordance with the regulations, modify the development 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 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.*

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 approved development remains, in its modified state, an application proposing alterations and additions to an existing residential flat building including ancillary landscaping located in the south western corner of the property. The modifications sought will not compromise the landscape quality, streetscape, foreshore scenic protection or residential amenity

outcomes achieved through approval of the original landscape regime.

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; and
- The modifications maintain the previously approved environmental outcomes.

On the basis of the above analysis, we regard the proposed modifications as being of minimal environmental impact and “essentially or materially” the same as the approved development. Accordingly, the development, as modified, represents substantially the same development as that originally approved.

Subject to Council undertaking the appropriate statutory notifications the application is appropriately dealt with by way of Section 4.55(2) of the Act.

3.2 Warringah Local Environmental Plan 2011

Height of buildings

We confirm that the approved developments performance when assessed against the clause 4.3 Height of Buildings development standards is not altered as a consequence of the modifications sought. All landscape works comply with the height of buildings development standard applicable to development on the land.

Earthworks and development on sloping land

The acceptability of the landscape modifications when assessed against the clause 6.2 – Earthworks and clause 6.4 Development on sloping land provisions of WLEP is addressed in the accompanying Geotechnical Assessment, dated 8th January 2020, prepared by Crozier Geotechnical Consultants.

From a review of photographs taken during the construction process, and our own observations on site, it is clearly evident the landscaping approved in the south western corner of the site was unable to be implemented due to the presence of bedrock with the creation of terraced planter beds and the importation of soil the only viable option to enable the establishment of any form of landscaping on this portion of the site.

The landscaping proposed in the south western corner of the site is depicted on the accompanying landscape plan and plant schedule prepared by Space Landscape Design. These plans collectively demonstrate that the intention of the original landscape regime is achieved, being the establishment of low level terraced landscaping in the south western corner of the site with such landscaping not giving rise to unacceptable residential amenity impacts.



Figure 1 – Photograph showing depth of bedrock in the south eastern corner of the property with the block wall, now clad in stone as depicted in Figure 2, founded on bedrock along its length

3.3 Manly Development Control Plan 2013

Having assessed the modified development against the applicable provision of Warringah Development Control Plan we note the following:

- The height, siting, scale and footprint of the development is unaltered,
- The proposal maintains the previously approved building heights and side and rear setbacks and an appropriate spatial relationship with adjoining development,

- The modified landscape design will not give rise to any inappropriate or jarring visual impacts as viewed from any adjoining residential property or the adjacent public domain. In fact, the removal of the approved access pathway, which would have required a 1 metre high balustrade along its length, would have resulted in significantly greater visual impacts as viewed from the lower level apartment within the adjoining development to the west No. 1A Greycliffe Street as depicted in Figure 2 over page.

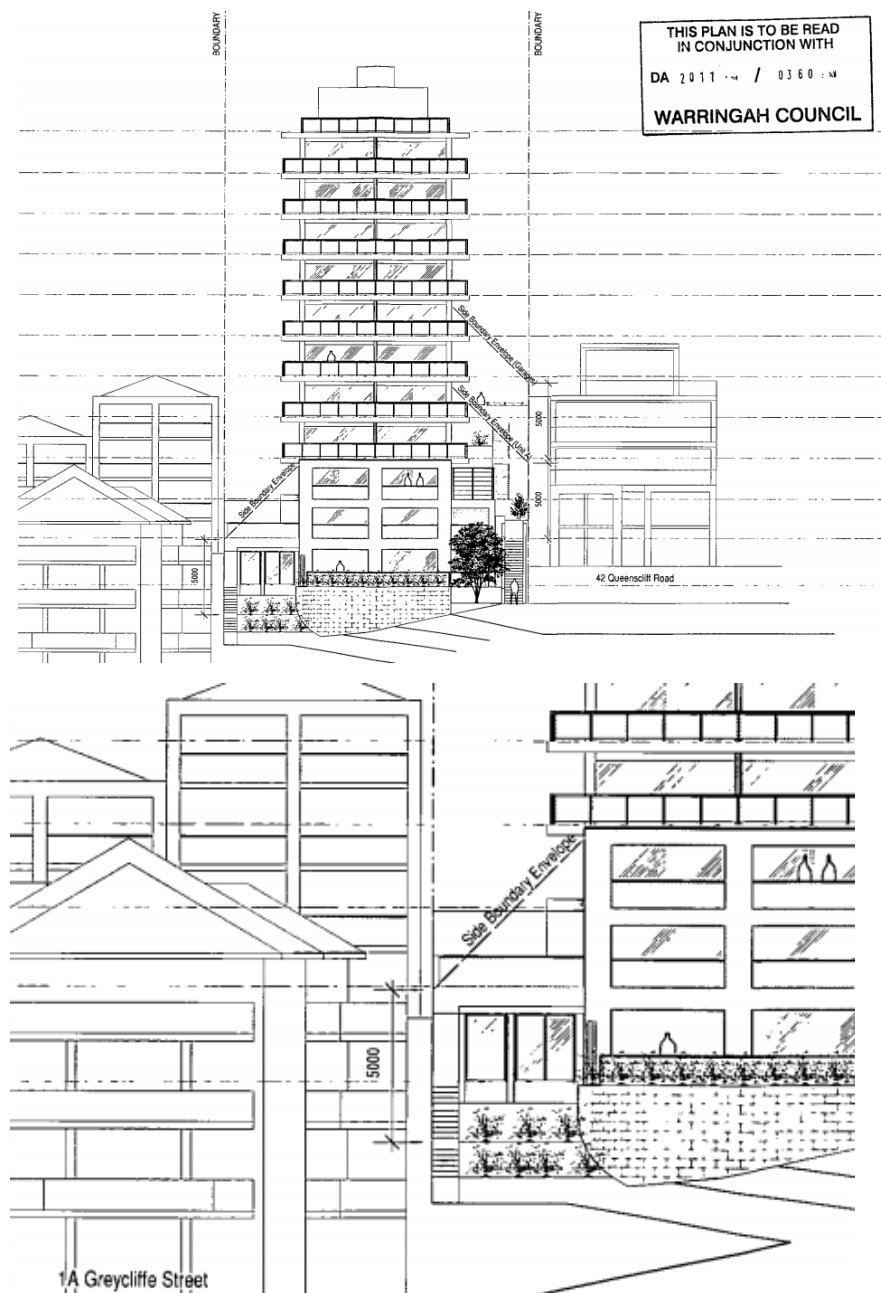


Figure 2 - Stamped plan extract DA2011/0360 showing location of the terraced landscaping and access stairs which are being deleted as a component of this application. These stairs would have required

a 1 metre high balustrade, or a dividing fence, to prevent persons falling into the adjoining property/ comply with the BCA

- The modified landscape design proposes plant species which at maturity will not impact existing public or private views. This is depicted in Figure 3 below noting that the lower level stone terrace wall depicted in this photograph is to be lowered 500mm as nominated on the landscape plan.



Figure 3 – Photograph showing the retention of the view line across the site towards Manly Beach and its surf zone from the adjoining apartments to the west No. 1A Greycliffe Street

- The modified landscape design proposes plant species which at maturity will not reduce existing levels of sunlight obtained by surrounding residential properties and will not cast shadow onto the adjacent public domain,
- The modified landscape design removes the previously approved pathway and provides for a non-trafficable terraced landscaped area which will not be capable of being used, or adapted for use,

as either private or communal open space and to that extent will not give rise to adverse visual or aural privacy impacts.

In fact, the modifications proposed result in enhanced visual privacy between adjoining development through the removal of the previously approved pathway located on the boundary in the south western corner of the site,

- The modifications sought will not compromise the landscape quality, streetscape, foreshore scenic protection or residential amenity outcomes achieved through approval of the original landscape regime, and
- No additional excavation is proposed.

These outcomes are visually depicted in Figure 4 below and Figure 5 over page



Figure 4 – View looking from end of driveway down towards the south western corner of the site and the terraced planter beds the subject of this application



Figure 5 – View looking from rear boundary of site back towards the terraced planter beds the subject of this application noting that they are to be lowered by between 100mm and 500mm as confirmed through a comparison of the levels nominated on the accompanying survey prepared by TSS Total Surveying Solutions and the levels nominated on the accompanying landscape plans

4.0 Conclusion

This application, made pursuant to Section 4.55(2) of the Act, seeks to modify the approved landscaping located in the south-western corner of the site, including the deletion of the approved pathway in this location, with the design and detailing of the modified landscaping providing for the following environmental/ residential amenity outcomes:

- The modified landscape design will not give rise to any inappropriate or jarring visual impacts as viewed from any adjoining residential property or the adjacent public domain,
- The modified landscape design proposes plant species which at maturity will not impact existing public or private views,
- The modified landscape design proposes plant species which at maturity will not reduce existing levels of sunlight obtained by surrounding residential properties and will not cast shadow onto the adjacent public domain, and
- The modified landscape design removes the previously approved pathway and provides for a non-trafficable terraced landscaped area which will not be capable of being used, or adapted for use, as either private or communal open space and to that extent will not give rise to adverse visual or aural privacy impacts.

We note that the landscape plans provide for a lowering of the “as built” terraced planter beds by between 100mm and 500mm as confirmed through a comparison of the levels nominated on the accompanying survey prepared by TSS Total Surveying Solutions and the levels nominated on the accompanying landscape plans.

The modifications sought will not compromise the landscape quality, streetscape, foreshore scenic protection or residential amenity outcomes achieved through approval of the original landscape regime.

This submission demonstrates that the development as modified represents substantially the same development as that originally approved with the outcomes sought by Council in its determination of the original application, and subsequent modifications, as they relate to appropriate landscape and residential amenity outcomes are not compromised. Subject to Council undertaking the appropriate statutory notifications the application is appropriately dealt with by way of Section 4.55(2) of the Act.

The modifications have been found to be acceptable when assessed against the heads of consideration pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act, 1979, as amended and in our opinion, are appropriate for the granting of consent.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

BOSTON BLYTH FLEMING PTY LIMITED

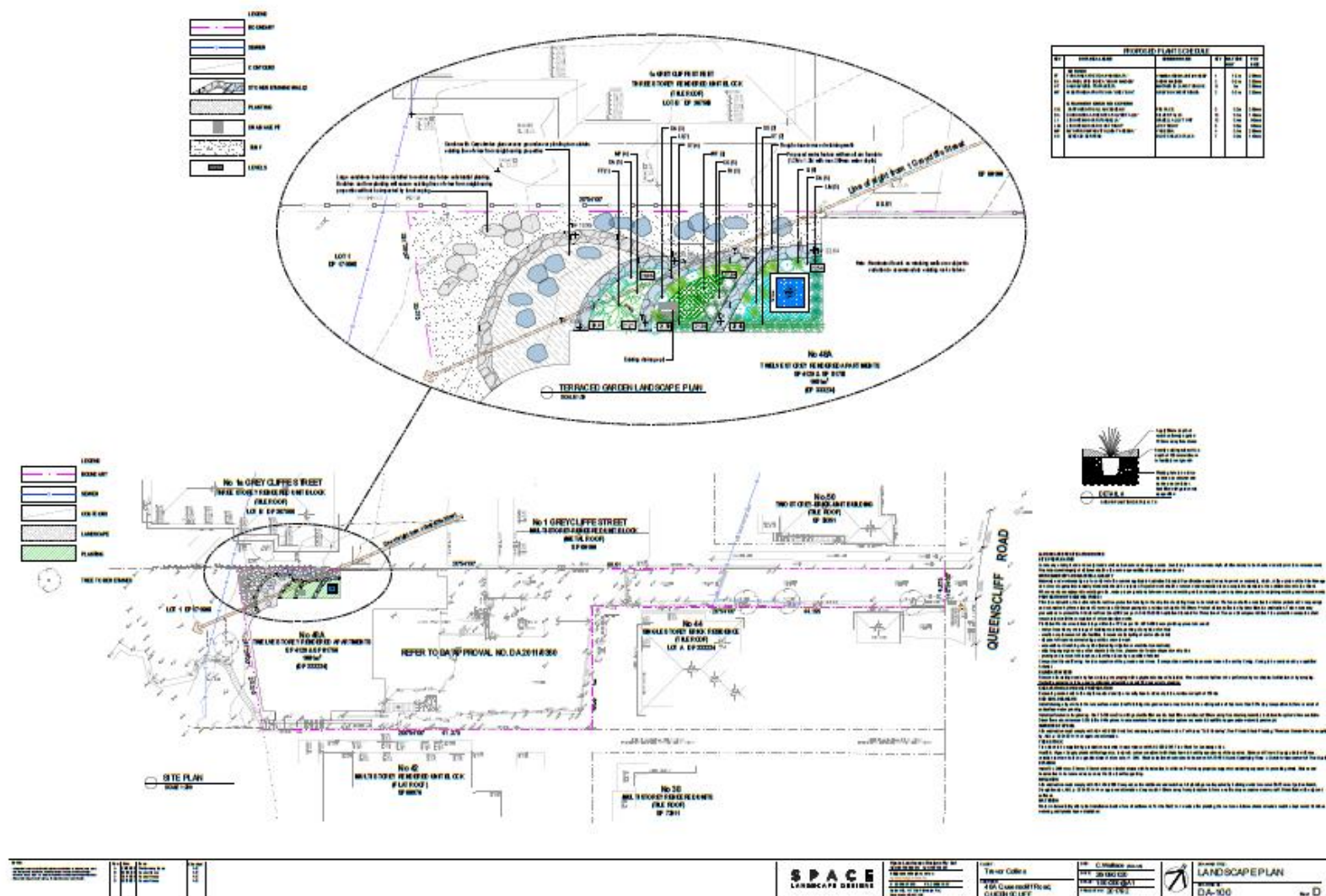
A handwritten signature in black ink, appearing to read 'Greg Boston', with a stylized flourish at the end.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

Director



PROPOSED PLANT SCHEDULE			
KEY	BOTANICAL NAME	COMMON NAME	QTY /MATURE HGT/POT SIZE
TREES			
PA	PLUMERIA ACUTIFOLIA	FRANGIPANI	1/4m /25Ltr
SHRUBS			
WG	WESTRINGIA FRUTICOSA 'GREY BOX'	GREY BOX WESTRINGIA	3/0.5m /250mm
GRASSES / GROUND COVERS			
CG	CARP OBROTUS GLAUDESCENS	PIG FACE	5/0.2m /200mm
LM	LIRIOPE MUSCARI 'JUST RIGHT'	JUST RIGHT	5/0.5m /140mm
ST	SANSEVIERIA TRIFASCIATA	MOTHER IN LAWS TONGUE	11/1m /200mm
LI	LIRIOPE MUSCARI 'ISABELLA'	ISABELLA LILY TURF	13/0.4m /140mm
FF	FURCRAEA FOETIDA 'VARIEGATA'	VARIEGATED MAURITILUS HEMP	1/1.5m /200mm
DA	DICONDRA ARGENTEA 'SILVER FALLS'	SILVER FALLS	13/0.1m /140mm
RI	RAPHIOLEPS INDICA 'SNOW MAIDEN'	SNOW MAIDEN	4/0.6m /250mm
MP	MYOPORUM PARVIFOLIUM 'VARENA'	VARENA	8/0.1m /200mm
SS	SENECIO SERPENS	BLUE CHALK STALKS	3/0.2m /140mm

