

14th August 2020

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

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA2020/0468
Alterations and additions to a Hotel
29 – 31 Moore Road, Freshwater

1.0 Introduction

On 24th June 2020 Northern Beaches Council granted development consent DA2020/0468 for alterations and additions to the existing hotel. Specifically, the approved works sought to improve the internal layout, function and amenity of the existing hotel through the reconfiguration of floor space and replacement of antiquated kitchen, bar and bathroom facilities. External works were limited to the demolition of the external stairs at the front of the property, the provision of festoon lights to the front courtyard, the provision of a new pedestrian access/ egress door from Charles Street and associated above door signage, the replacement/ upgrading of existing fenestration to achieve required acoustic performance criteria and the upgrading of existing roof mounted kitchen exhaust and mechanical ventilation plant equipment.

We have been engaged to prepare an application to refine the detailing of the approved works pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (“the Act”).

Specifically, the modifications include further refinements in accessibility, the provision of necessary externally accessed fire booster and valve set services and gas and water meters, the provision of awnings to the existing Moore Road facing windows, modification to the approved 50mm façade paint strip, minor window change to the eastern restaurant area façade, changes to approved nib wall detailing and the lowering of the rear courtyard to accord with the new internal floor level.

The application also proposed the installation of a crash barrier wall to the south of the lowered courtyard to provide necessary patron protection. The proposed modifications do not require any changes to the approved acoustic attenuation measures as detailed within the conditions of development consent and the approved Operational Plan of Management as confirmed in the accompanying acoustic addendum letter, dated 31st July 2020, prepared by The Acoustic Group.

Further, the acceptability of the proposed modifications having regard to the statutory accessibility considerations is detailed in the accompanying accessibility report, dated 28th July 2020, prepared by Trevor R Howse with the acceptability of the minor excavation associated with the lowering of the rear courtyard detailed in the accompanying geotechnical assessment, dated 10th June 2020, prepared by Crozier Geotechnical Consultants. Finally, the accompanying Heritage Statement, dated 4th August 2020, prepared by Weir Phillips Heritage and Planning confirms that the modifications will not give rise to unacceptable heritage conservation outcomes and accordingly are appropriate for approval.

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 Modifications

The modifications to the detailing of the application are shown clouded in red on the following architectural plans prepared by Alexander & Co:

S4.55-AXX-001	SITE & ROOF - EXISTING & DEMOLITION PLAN
S4.55-A00-001	GROUND FLOOR - EXISTING & DEMOLITION PLAN
S4.55-A01-001	FIRST FLOOR - EXISTING PLAN
S4.55-D00-011	GROUND FLOOR - GENERAL ARRANGEMENT PLAN
S4.55-EXX-001	OVERALL BUILDING - EXTERNAL ELEVATIONS 01
S4.55-EXX-002	OVERALL BUILDING - EXTERNAL ELEVATIONS 02
S4.55-FXX-001	OVERALL BUILDING - SECTION AA

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The accompanying correspondence prepared by Crystal Fire Services confirms that locating the fire booster and valve assembly in the front wall facing Moore Road is the only location that will meet the NCC/BCA specifications and the required aspects of AS 2118.1 and AS 2419.1, first and foremost being the provision of sufficient radiant heat protection for Fire & Rescue NSW personnel during firefighting operations.

Modification of Conditions

Condition 1 will need to be modified to reflect the amended plans and associated consultant reports.

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 as to whether the proposal is of minimal environmental impact we note that the modifications sought are relatively minor with the accompanying reports demonstrating that the heritage conservation, acoustic, streetscape and residential amenity outcomes afforded through approval of the original scheme are not compromised. That is, the environmental performance of the proposal as originally approved is not compromised. Further, the previously approved building heights, setbacks and envelope are unaltered with the modifications 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 heritage conservation, acoustic, streetscape and residential amenity outcomes afforded through approval of the original scheme are 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 alterations and additions, and the general refurbishment, of the existing hotel;
- The previously approved building heights, setbacks and footprint are maintained;
- The modifications maintain the previously approved environmental outcomes in terms of heritage conservation, acoustics, residential amenity 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 2011

Having assessed the development as modified against the relevant provisions of Warringah Local Environmental Plan 2011 (WLEP) we advise that:

- In relation to clause 4.3 – Height of buildings of WLEP, we confirm that the previously approved complaint building heights are not altered.
- In relation to clause 6.2 – Earthworks of WLEP, we confirm that the minor excavation proposed to facilitate the lowering of the rear courtyard will not alter the approved developments performance when assessed against the matters for consideration at clause 6.2(3) of WLEP. In this regard, we rely on the accompanying geotechnical assessment, dated 10th June 2020, prepared by Crozier Geotechnical Consultants; and

In relation to clause 5.10 Heritage Conservation provisions of WLEP, we rely on the accompanying Heritage Statement, dated 4th August 2020, prepared by Weir Phillips Heritage and Planning confirms that the modifications will not give rise to unacceptable heritage conservation outcomes and accordingly are appropriate for approval.

5.0 Warringah Development Control Plan

Having assessed the development as modified against the relevant provisions of Warringah Local Environmental Plan 2011 (WLEP) we advise that:

- The approved height, bulk, scale and setbacks of the development are unaltered.
- The modifications will not compromise the heritage conservation, streetscape, residential amenity or operational management outcomes achieved through approval of the original scheme.
- The additional excavation proposed is relatively minor and contained within the existing building footprint.
- The modifications do not compromise existing landscape outcomes.
- The approved waste manage arrangements are unaltered.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the development by virtue of its modified façade detailing offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.
- Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings and consistent with the height and form of development anticipated on the site.

5.0 Conclusion

The proposed modifications include further refinements in accessibility, the provision of necessary externally accessed fire booster and valve set services and gas and water meters, the provision of awnings to the existing Moore Road facing windows, modification to the approved 50mm façade paint strip, minor window change to the eastern restaurant area façade, changes to approved nib wall detailing and the lowering of the rear courtyard to accord with the new internal floor level.

The proposed modifications do not require any changes to the approved acoustic attenuation measures as detailed within the conditions of development consent and the approved Operational Plan of Management. This report demonstrates that the previously approved heritage conservation, acoustic, streetscape and residential amenity outcomes afforded through approval of the original scheme are 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.

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 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



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director