

2019.11.13

The General Manager
Northern Beaches Council
1 Belgrave Street
Manly NSW 2095

STATEMENT OF ENVIRONMENTAL EFFECTS

MODIFICATION S4.55 1A OF DA2019/0509
ADDRESS: 52 (A&B), 52 LAUDERDALE AVENUE, FAIRLIGHT

Pursuing approval for modifications S4.55 1A to DA2019/0509
"Demolition works, subdivision of one lot into two and
construction of two semi-detached dwellings". The application will include the following
documents:

Application form, with owner's consent

Architectural drawings, scale 1:100@A3 prepared by Platform Architects Pty Ltd:

- A1.00 Basement Plan, issue S4.55
- A1.01 Mezzanine Plan, issue S4.55
- A1.02 Undercroft Plan, issue S4.55
- A1.03 Ground Floor Plan, issue S4.55
- A1.04 Level 1 Plan, issue S4.55
- A1.05 Level 2 Plan, issue S4.55
- A1.06 Roof Plan/Site plan, issue S4.55
- A2.01 South Elevation, issue S4.55
- A2.02 West Elevation, issue S4.55
- A2.03 North Elevation, issue S4.55
- A2.04 East Elevation, issue S4.55
- A3.01 Section AA, issue S4.55
- A3.02 Section BB, issue S4.55
- A5.03 Driveway Elevation, issue S4.55

Landscape drawings, scale 1:100@A3 prepared by Paul Scrivener Landscape:

- 120 Landscape plan front garden, issue s4.55
- 121 Landscape plan level 2, issue s4.55

A4 Notification Plans prepared by Platform Architects

CD with PDFs of all of the above

1. INTRODUCTION

The subject Development Application was approved by Northern Beaches Council on the 9th October 2019. The consent lapses on the 9th October 2024.

The approved works involve demolition of existing dwelling, subdivision of the land into two Torrens Title lots and construction of two semi-detached dwellings with basement garages comprising two (2) car spaces each.

This section 4.55 1(A) application retains the details of the works as consented to but seeks to make adjustments of minor nature to the approved works.

The amendments below have little or no impact on neighbours.

Furthermore:

- There is no increase in the number of units or bedrooms within the development which remains within the ambit of the development as approved.
- The overall scale of the development remains generally as approved by reference to the approved and proposed FSR figures.

List of proposed changes to the approved drawings:

Basement plan:

- A stair is introduced to each dwelling to connect the garage with the dwelling above internally. This will improve the amenity of both dwellings.

Mezzanine / storage plan:

- Same as for basement level
- Front fence adjusted to be sloping instead of stepped
- Gate set back from boundary

Undercroft plan:

- RL lowered due to increased ceiling zone to fit a Heat Recovery Ventilation System (HRV) to floors above
- Laundry lowered to suit new stair to mezzanine and basement below
- External entry stair and front garden adjusted to suit new levels

Ground floor plan:

- RL lowered due to increased ceiling zone to fit a Heat Recovery Ventilation System (HRV) to habitable areas
- Some windows slightly reduced in size or opening mechanism to suit selected high thermal performance windows

First floor plan:

- Some windows slightly reduced in size or opening mechanism to suit selected high thermal performance windows

Second floor plan:

- Some windows slightly reduced in size or opening mechanism to suit selected high thermal performance windows

Elevations:

- Some adjustments to windows as noted above.
- Minor amendments to finishes to reveals
- Minor adjustments to suit new floor and ceiling levels

2. GENERAL COMMENTS

It is our opinion that the proposed changes will have no to little negative effects on neighbours.

3. APPLICATION FOR MODIFICATION

S.4.55(1A) of the Act provides:

(1A) Modifications involving minimal environmental impact

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, 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 any period prescribed by the regulations or provided by the development control plan, as the case may be.*

In this instance it is not considered the changes to the detail of the works substantially alters or changes the development as consented or to such that it would not be considered to be the same, or substantially the same development. The land use outcome remains within the ambit of the approved landuse as referred to within the Council notice of determination of DA 2019/0509 as modified. The building bulk and scale remains (generally) the same.

A consideration of whether the development is substantially the same development has been the subject of numerous decisions by the Land & Environment Court and by the NSW Court of Appeal in matters involving applications made pursuant to S.96 of the Act. Sydney City Council v Ilenace Pty Ltd (1984) 3 NSWLR 414 drew a distinction between matters of substance compared to matters of detail. In Moto Projects (No.2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298 Bignold J referred to a requirement for the modified development to be substantially the same as the originally approved development and that the requisite finding of fact to require a comparison of the developments. However, Bignold noted the result of the comparison must be a finding that the modified development is 'essentially or materially' the same as the (currently) approved development. Bignold noted;

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the development being compared in their proper contexts (including the circumstances in which the development consent was granted).

In Basemount Pty Ltd & Or v Baulkham Hills Shire Council NSWLEC 95 Cowdroy J referred to the finding of Talbot J in Andari - Diakanastasi v Rockdale City Council and to a requirement that in totality the two sets of plans should include common elements and not be in contrast to each other. In North Sydney Council v Michael Standley & Associates Pty Ltd (1998) 43 NSWLR 468; 97 LGRERA 443 Mason P noted:

Parliament has therefore made it plain that consent is not set in concrete. It has chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity. The consent authority can withhold its approval for unsuitable applications even if the threshold of subs (1) is passed.

I agree with Bignold J in Houlton v Woollahra Municipal Council (1997) 95 LGRERA 201 who (at 203) described the power conferred by s.102 as beneficial and facultative. The risk of abuse is circumscribed by a number of factors. Paragraphs (a), (b) and (c) of subs

(1) provide narrow gateways through which those who invoke the power must first proceed. Subsection (1A) and subs (2) ensure that proper notice is given to persons having a proper interest in the modified development. And there is nothing to stop public consultation by a Council if it thinks that this would aid it in its decision making referable to modification. Finally, subs (3A),

coupled with the consent authorities discretion to withhold consent, tend to ensure that modifications will not be enterprised, nor taken in hand, unadvisedly, lightly or wantonly. Naturally some modifications will be controversial, but decision making under this Act is no stranger to controversy.

Senior Commission Moore in Jaques Ave Bondi Pty Ltd v Waverly Council (No.2) (2004) NSWLEC 101 relied upon Moto Projects in the determination, involving an application to increase the number of units in this development by 5 to a total of 79. Moore concluded the degree of change did not result in the a development which was not substantially the same, despite the fact that in that case the changes included an overall increase in height of the building. Moore relied upon a quantitative and qualitative assessment of the changes as determined by the Moto test.

In my opinion a quantitative and qualitative assessment of the application is that it remains substantially the same. Quantitatively, the nature of the approved land use is not altered as a consequence of the changes as proposed. The approved building height, bulk and scale of the building remains generally within the ambit of the consent and the plans as approved. The form of the approved structure is not materially altered and the impacts are limited to a consideration of the revised layouts. These revisions are minor and have little to no material impact to the surrounding properties given the changes are generally confined within the volume of the structure as originally approved.

Qualitatively, the physical appearance of the structure remains consistent with the consent as issued. The form of the building is simplified and physical presence improved. In that circumstance the changes may be considered minor.

4. CONCLUSION

Pursuant to Section S.4.55 of the Environment Planning and Assessment Act 1979 the consent authority can be satisfied that the modified consent as sought by this submission is substantially the same development as referred to in the original application. For the reasons outlined above we consider the amendments to the detail of the consent are reasonable.

We would be pleased to clarify or expand upon this submission as may be necessary.

Yours Sincerely



Bridie Gough
Director
Architect (ARB No. 8280)