

26th November 2019

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

Dear Sir,

Statement of Environmental Effects
Modification of consent A212/63
Installation of accessible lift
Pasadena
1858 Pittwater Road, Church Point

1.0 Introduction

This document forms a component of a development application proposing the modification of the consent pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act). The modification proposes the installation of an accessible passenger lift within the existing building to satisfy the disability access provisions of the Building Code of Australia (BCA) and the Disability Discrimination Act 1992 (DDA).

The works are limited to the retrofitting of a passenger lift into the existing stairwell void with the proposed lift and associated overrun located wholly within the existing building envelope. Given its internalised location the proposed lift will not be discernible from outside the building and will not give rise to any adverse environmental consequences.

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 Environmental Planning and Assessment Act 1979 (the Act)

2.0 Site description and location

The proposed works are located on Lot 142, DP 752046, No. 1858 Pittwater Road Church Point. The site is occupied by a 3 storey mixed use building known as Pasadena which operates pursuant to the 1961 development consent and subsequent 1963 building approval. The site and its immediate surrounds are depicted in Figure 1 below.

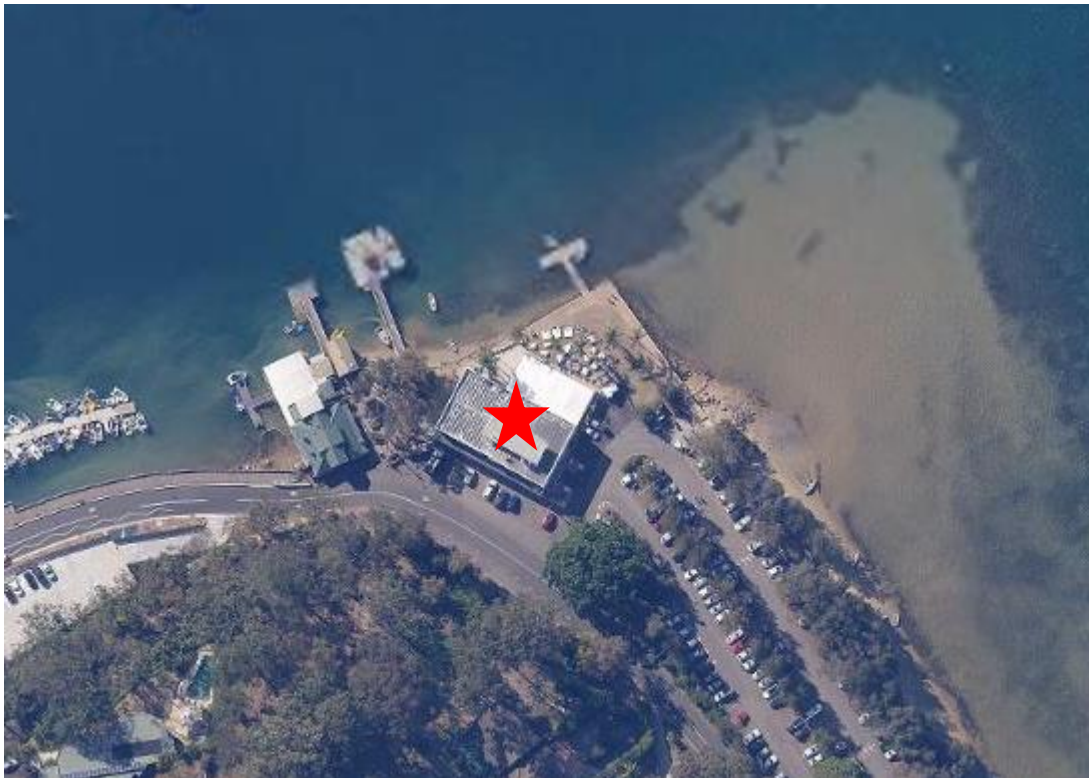


Figure 1 – Subject site and immediate surrounds

Sir Thomas Stephens Reserve and 2 adjacent commuter wharfs, the smaller of which is heritage listed, are located to the west of the site providing an important transport “gateway” and focal point for community interaction and recreation. The property further to the east is occupied by a 2 storey heritage listed weatherboard building with metal roof known as the Church Point Post Office and Store from which light refreshments, groceries and alcohol is able to be purchased. The land to the east of the site is occupied by a public car park.

To the south of the subject site, and located at a higher elevation, are a number of residential properties oriented towards the prevailing views, Quarter Sessions Reserve and a heritage listed cemetery. Scotland Island and Elvina Bay are located 400 and 600 metres respectively from the site generally in a northerly direction.

3.0 Development Proposal

The modification proposes the installation of an accessible passenger lift within the existing building to satisfy the disability access provisions of the Building Code of Australia (BCA) and the Disability Discrimination Act 1992 (DDA). The proposed works are depicted on the following plans prepared by Quattro Architecture:

DA-A-000	COVER SHEET
DA-A-050	SITE PLAN
DA-A-100	GROUND FLOOR PLAN
DA-A-101	LEVEL 1 PLAN
DA-A-102	ROOF TOP PLAN
DA-A-150	LIFT DETAILS

The works are limited to the retrofitting of a passenger lift into the existing stairwell void with the proposed lift and associated overrun located wholly within the existing building envelope. Given its internalised location the proposed lift will not be discernible from outside the building and will not give rise to any adverse environmental consequences.

4.0 Statutory Planning Framework

4.1 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 threshold question as to whether the proposed modifications are of minimal environmental impact, we note that the works are limited to the retrofitting of a passenger lift into the existing stairwell void with the proposed lift and associated overrun located wholly within the existing building envelope. Given its internalised location the proposed lift will not be discernible from outside the building and will not give rise to any adverse environmental consequences.

The modifications will not in any manner alter the 3-dimensional built form, residential amenity or heritage conservation outcomes (adjoining items) achieved through approval of the original scheme. To that extent, Council can be satisfied that the modifications involve minimal environmental impact.

In answering the above 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, 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, side boundary setbacks and landscape outcomes. The modifications will not alter the 3-dimensional built form, residential amenity or heritage conservation outcomes achieved through approval of the original scheme.

We also note that the proposed lift does not seek to provide access to any part of the building not already accessible by internal stairs with the lift required to satisfy the disability access provisions of the Building Code of Australia (BCA) and the Disability Discrimination Act 1992 (DDA).

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;
- The external building appearance, envelope and volume as perceived from adjoining properties and the public domain are not altered;
- The modifications maintain the previously approved residential amenity outcomes in terms of views, privacy, visual bulk and overshadowing.

On the basis of the above analysis we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.55(1A) of the Act.

4.2 Pittwater Local Environmental Plan 2014

4.2.1 Zoning

The subject property is zoned B1 Neighbourhood Centre pursuant to Pittwater Local Environmental Plan 2014 (PLEP 2014):

The existing hotel and ancillary restaurant use operate in accordance with consent A212/63 and pursuant to section 4.70 of the Environmental Planning and Assessment Act 1979 (the Act).

In this regard, the lift relies on the rights afforded to the ongoing operation of the premises pursuant to these provisions.

4.2.2 Height of buildings

Pursuant to clause 4.3 of PLEP 2014 the maximum height of development on the land shall not exceed 8.5 metres or 8.0 metres above the Flood Planning Level (FPL).

We confirm that the existing building has a height of 9.35 metres measured above the FPL of RL 2.5 AHD and is therefore non-compliant with the standard. Whilst the established roof form is maintained the proposed passenger lift does extend to the underside of the roof sheeting and therefore breaches the height standard.

We note that a clause 4.6 variation request is not required for an application made pursuant to s4.55 of the Act. Notwithstanding, an assessment of the internalised breaching lift element against the objectives of the standard is follows:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Response: The established building height and external appearance is unaltered.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Response: The established building height and external appearance is unaltered.

(c) to minimise any overshadowing of neighbouring properties,

Response: The established building height and external appearance is unaltered. There is no additional shadowing.

(d) to allow for the reasonable sharing of views,

Response: The established building height and external appearance is unaltered.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Response: The passenger lift does not require any site disturbance.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Response: The established building height and external appearance is unaltered.

In this regard, we have formed the considered opinion that the proposed passenger lift is consistent with the objectives of the height of buildings standard and accordingly strict compliance has been found to be both unreasonable and unnecessary in the circumstances.

Further, we have formed the considered opinion that there are sufficient environmental planning grounds to justify contravening the development standard namely the requirement to upgrade the building in terms of accessibility and BCA compliance through the provision of a passenger lift. Under such circumstances, approval would not be antipathetic to the public interest.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

4.2.3 Heritage Considerations – Statement of Heritage Impact

Pursuant to Clause 5.10 of Pittwater LEP 2014 the consent authority may, before granting consent to any development on land within the vicinity of a heritage item, require a Heritage Impact Statement to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item concerned.

Whilst the subject property is not heritage listed or located within a heritage conservation area the property is located within the vicinity of a number of heritage items namely:

- Lot 318, DP 824048 – McCarrs Creek Road – Church Point Post Office and Store.
- Lot 319, DP 824048 – McCarrs Creek Road – Church Point Wharf.
- Lot C, DP 349212, former Methodist Church site, No. 1 McCarrs Creek Road – graveyard and site of former Methodist Church.

We have formed the opinion that the internalised works will have a neutral impact on the surrounding heritage items and their setting.

4.2.4 Acid sulphate soils

Pursuant to clause 7.1 PLEP 2014 the site is identified as Class 5 on the Acid Sulfate Soils Map. As the proposed works do not involve excavation or site disturbance no further analysis is required in relation to these provisions.

4.2.5 Flood Planning

Pursuant to clause 7.3 PLEP 2014 the site is identified as being affected by an Overland Flow Path – Minor and subject to tidal inundation. The established floor levels are unaltered with the minor works proposed not requiring/ justifying any particular flood mitigation measures.

4.2.6 Limited Development in Foreshore Area

Pursuant to clause 7.8(2) PLEP 2014 Development consent must not be granted for development on land in the foreshore area except for the following purposes:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The following definitions are applicable:

Foreshore area means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the Foreshore Building Line Map.

Foreshore building line means the line shown as the foreshore building line on the Foreshore Building Line Map.

The property is subject to a Foreshore Building Line (FBL) the location of which is nominated in Figure 2 over page. We note that the FBL cuts diagonally through the existing building on the property.

We note that the proposed passenger lift is located wholly behind the FBL in strict accordance with the standard.

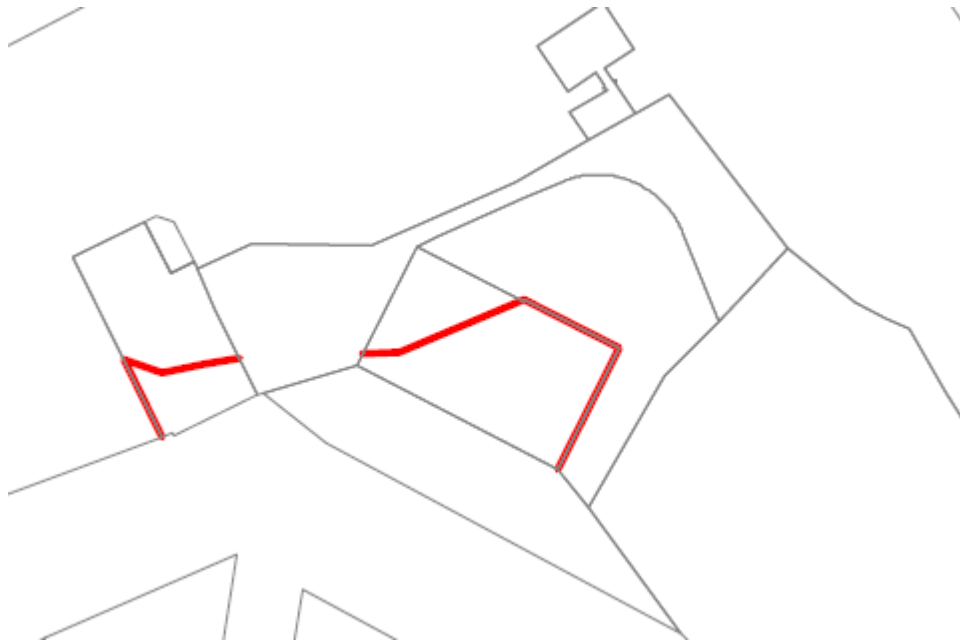


Figure 2 – Foreshore Building Line Map Extract PLEP 2014

4.2 Pittwater 21 Development Control Plan

Having regard to these provisions we note that the works are limited to the retrofitting of a passenger lift into the existing stairwell void with the proposed lift and associated overrun located wholly within the existing building envelope. Given its internalised location the proposed lift will not be discernible from outside the building and will not give rise to any adverse environmental consequences.

The proposal satisfies the relevant DCP provisions.

5.0 Conclusion

The modification proposes the installation of an accessible passenger lift within the existing building to satisfy the disability access provisions of the Building Code of Australia (BCA) and the Disability Discrimination Act 1992 (DDA).

The works are limited to the retrofitting of a passenger lift into the existing stairwell void with the proposed lift and associated overrun located wholly within the existing building envelope. Given its internalised location the proposed lift will not be discernible from outside the building and will not give rise to any adverse environmental consequences.

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 Environmental Planning and Assessment Act 1979 (the Act)

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director