

17th June 2024

The CEO
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA2020/1246
Alterations and additions to a dwelling house including a swimming pool
191 Whale Beach Road, Whale Beach

1. Introduction

On 11th December 2020 development consent DA2020/1246 was granted for alterations and additions to the existing dwelling house including the construction of a new swimming pool on the subject allotment. This consent was subtly modified on a number of occasions to refine the detail of the development and enhance buildability.

This Statement of Environmental Effects (SoEE) has been prepared in support of an application made pursuant to s4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act) seeking the following modifications:

- The introduction of a ground floor guest ensuite.
- The relocation of the ground floor bedroom 3 window.
- Chimney size increase.
- The introduction of a glazed north-east facing door to the kitchen.
- The construction of a pergola over the existing first floor north-east facing deck.
- The construction of new retaining wall structures to accommodate a level lawn area to the north-east of the dwelling.

We confirm that the modifications/ works, the subject of this modification application, have not commenced.

We note that the modifications do not significantly alter the previously approved building form or envelope and in this regard we are of the opinion that the modifications sought will not compromise the environmental or residential amenity outcomes afforded through approval of the original application, as modified.

As such, Council can be satisfied that the modifications are of minimal environmental impact and that the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of s4.55(1A) of the Act.

The proposal succeeds when assessed against the heads of consideration pursuant to section 4.15(1) of the Act. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

2.0 Detail of Modifications Sought

Modifications to Architectural detailing

The proposed modifications are shown clouded on plans S4.55-D-01(C), S4.55-D-02(B), S4.55-D-03(B), S4.55-D-04(B), S4.55-E01(B), S4.55-E02(B), S4.55-E03(B) and S4.55-E04(B) prepared by Akin Atelier. Specifically, the modifications include:

- The introduction of a ground floor guest ensuite.
- The relocation of the ground floor bedroom 3 window.
- Chimney size increase.
- The introduction of a glazed north-east facing door to the kitchen.
- The construction of a pergola over the existing first floor north-east facing deck.
- The construction of new retaining wall structures to accommodate a level lawn area to the north-east of the dwelling.

This submission is accompanied by an updated BASIX Certificate and geotechnical report.

The previously approved stormwater drainage regime is not altered as a consequence of the modifications sought with the minor changes to the landscaping appropriately dealt with by way of condition.

Modifications to conditions of consent

Condition 1 - Approved Plans and Supporting Documentation

This condition is to be amended to reflect the modified Architectural plans.

3.0 Section 4.55(2) 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, we have formed the considered opinion that the modifications sought are of minimal environmental impact given that the previously approved building height, setbacks and envelope are otherwise unaltered. The approved residential amenity outcomes in terms of solar access, privacy and view sharing are not compromised.

No additional excavation is proposed 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 building height and envelope are unaltered with the residential amenity outcomes in terms of solar access, privacy and view sharing 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 proposed use does not change,
- The proposed residential density does not change,
- The building form, footprint, setbacks, floor space, car parking, landscaping and drainage circumstances are not altered,

- The proposal maintains a complimentary and compatible streetscape and coastal foreshore presentation,
- The modifications maintain the previously approved residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk and overshadowing and view sharing, and
- The modifications have resulted from a desire to refine the detailing of the proposal in relation to internal amenity.

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 Pittwater Local Environmental Plan 2014

Having assessed the development as modified against the relevant provisions of Pittwater Local Environmental Plan 2014 (PLEP) we advise that:

1. In relation to clause 4.3 – Height of buildings of PLEP, we confirm that all proposed modification works sit comfortably below the 8.5 metre prescribed building height standard.
2. In relation to clause 7.1 – Acid Sulfate Soils, we confirm that the findings contained within the previously approved geotechnical report prepared by JK Geotechnics are not altered as a consequence of the modifications sought and to that extent do not alter the approved developments performance when assessed against the matters for consideration at clause 7.1 of PLEP.
3. Pursuant to clause 7.6 - Biodiversity protection, the land is identified on the biodiversity map. In this regard, given the minor nature of the proposed modification the modifications sought will not give rise to any unacceptable biodiversity impacts.
4. Pursuant to clause 7.7 - Geotechnical hazards no additional excavation is proposed and accordingly the approved developments performance when assessed against the matters for consideration at clause 7.7 of PLEP.
5. Pursuant to clause 7.8 - Limited development on the foreshore area, we confirm that all proposed works, as modified, are located outside the foreshore building line.

Accordingly, there is no statutory planning impediment to the granting of the modifications sought.

5.0 Pittwater 21 Development Control Plan

Having assessed the development as modified against the relevant provisions of Pittwater 21 Development Control Plan we advise that:

1. The approved bulk, scale and setbacks of the development are maintained with the works reflecting a general refinement in the detailing of the approved development.
2. The modifications will not compromise the residential amenity or streetscape outcomes achieved through approval of the original scheme.
3. The approved waste management, landscaping and stormwater disposal arrangements are not altered.
4. 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 detailing offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.
5. Accordingly, it can be reasonably concluded that the proposal, as modified, remains compatible with its surroundings and consistent with the height and form of development anticipated on the site.

5.0 Conclusion

Council can be satisfied that the modifications are of minimal environmental impact and that the development as modified represents substantially the same development as originally approved. Further, having given consideration to the reasons given by the consent authority for the grant of the consent that is sought to be modified, we are of the opinion that the modifications are appropriately dealt with by way of Section 4.55(1A) of the Act.

We note that the majority of modifications are contained within the approved building footprint and envelope with particular care taken to maintain the building design, streetscape, foreshore scenic protection and residential amenity outcomes afforded through approval of the original proposal as previously modified.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Act. It is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

Yours sincerely

BOSTON BLYTH FLEMING PTY LTD

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

Director