

5 December 2017

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

Dear Sir/Madam,

**APPLICATION TO MODIFY DEVELOPMENT CONSENT,
SECTION 96 (2) ENVIRONMENTAL PLANNING & ASSESSMENT ACT**

Development Application No:	DA 84/2017
Date of Determination:	7 August 2017
Premises:	Lot 2, DP 5556990, No. 7 Laura Street, Manly
Proposed Development:	Alterations and additions to an existing dwelling

On behalf of Mr Nicholas Manettas, this submission has been prepared to assist Council in the consideration of an application pursuant to Section 96(2) of the Environmental Planning & Assessment Act 1979 to alter the development as approved by Development Consent DA N0 84/2017.

The application will seek to modify the form of the approved additions and alterations to the existing dwelling. The changes are discussed in further detail below.

BACKGROUND

An application for consent for alterations and additions to an existing dwelling was approved by Council by Notice of Determination on 7 August 2017.

The works that were the subject of Council's consent have not commenced.

PROPOSED MODIFICATION

The proposed revisions to the plans have been detailed in the amended details prepared by Dino Raccanello Design Pty Ltd, S96 1503.000 (Issue D), 1503.200 (Issue D), 1503.201 (Issue E), 1503.202 – 1503.205 (Issue D), 1503.300 (Issue D), 1503.400 (Issue D), 1503.401 (Issue D), dated 31 October 2017.

....1/6

This submission under S96(2) seeks to modify the approved development to reflect the following changes, which are highlighted in red on the revised architectural plans:

Basement

- Reconfiguration of the proposed north-eastern portion of the Basement Level to allow for the retention of the existing encased sewer line
- Relocation of the approved plant room and store to proposed basement under the approved garage
- New steam room to be provided in the area previously designated as a store
- Minor extension to western elevation of rear terrace.

Ground Floor

- Removal of existing western planter adjoining Window No. W02 and W03
- Reconfiguration of Stair 2 to allow suitable access to the garage basement

First Floor

- Extension of approved terrace to south-east
- Extension of approved garage to the south-west

Roof

- New roofing is to be provided over the entire dwelling

The existing segmented roof is to be replaced with a single roof form to allow for better drainage.

The proposed new roof form will require a minor adjustment to the parapet level, which will not have any substantial impact to the view or amenity of the adjoining neighbours.

The overall height and general bulk and scale of the approved additions and alterations to the building will not be changed.

The development indices for the site are:

Site Area	739.8m ²
Allowable FSR	0.4:1 or 295.92m ²
Proposed FSR	0.53:1 or 394.69m ²

Required Open space (Area OS3) – 55% total/35% soft open space	406.89m ² (55%)/142.41m ² (35%)
Proposed total open space	497.9m ² or 67.3%
Proposed landscape open space	309.1m ² or 41.8%

A revised Geotechnical assessment has been prepared by White Geotechnical Group, Reference No. J1212B, dated 22 November 2017.

JUSTIFICATION

The Environmental Planning & Assessment Act 1979 provides for the modification of a consent under S96(2) which notes:

(2) Other modifications

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 development to which the consent as modified relates is substantially the same development as the development for which 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 5) 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.*

Subsections (1) and (1A) do not apply to such a modification.

Accordingly, for the Council to approve the S96 Modification Application, the Council must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

LEGAL TESTS

To assist in the consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289* where His Honours states:

[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

[56] 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 type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

In my opinion, in terms of a “qualitative comparison”, the Modification Application is substantially the same development as that which was approved.

The works seek to provide for minor alterations to the approved form of the development and which do not substantially alter the building’s bulk and scale.

The overall ridge height of the dwelling will be increased by 340mm to RL 19.08m. As discussed previously, the existing segmented roof is to be replaced with a single roof form to allow for better drainage.

The proposed minor increase to the parapet level will not have any substantial impact to the view or amenity of the adjoining neighbours.

The changes do not introduce any significant issues for the neighbouring properties in terms of view loss or privacy.

When viewed from the public domain or from the neighbouring properties, the building will largely present the same visual impact and appearance to that originally approved.

Similarly, the application is substantially the same development when subjected to a “quantitative comparison”, as the works provide for “alterations and additions to a dwelling house” in a location and to a form which is consistent with the consent.

In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination and the application can be reasonably assessed by Council under S96 of the Act.

Conclusion

The test established in **Moto** requires both a quantitative and a qualitative assessment.

In terms of the quantitative extent of the proposed alterations to the dwelling, the minor nature of the changes ensures that the design remains consistent with the approved form.

The proposal also satisfies the qualitative assessment required by the Moto test. The modifications will result in a development which remains generally as approved, for the same purpose and with no substantive modifications to the physical appearance of the approved building.

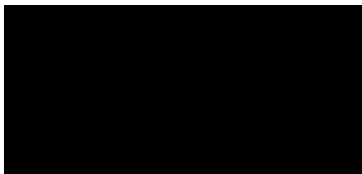
The proposed modification is justified on the basis that:

- The proposed works are generally consistent with the application as approved and will not comprise the amenity of the subject or neighbouring properties.
- The proposal is “substantially” the same development, as defined by the Environmental Planning & Assessment Act 1979.

Council’s support of the modification to the form of the proposed development is sought in this instance.

Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

Yours faithfully,

A large black rectangular box used to redact the signature of Vaughan Milligan.

VAUGHAN MILLIGAN