

30th July 2024

The CEO
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA2022/1715
Alterations and additions to a dwelling house including a swimming pool
60 Hudson Parade, Clareville

1. Introduction

On 22nd November 2023 development consent DA2022/1715 was granted for alterations and additions to the existing dwelling house including the construction of a new swimming pool on the subject allotment.

This Statement of Environmental Effects (SoEE) has been prepared in support of an application made pursuant to s4.55(2) of the Environmental Planning and Assessment Act 1979 (the Act) seeking to modify the development consent involving a general refinement in the detailing of the proposal to enhance amenity and improve buildability.

We note that the majority of modifications are contained within the approved building footprint and envelope and in this regard, we are of the opinion that the modifications sought will not compromise the residential amenity outcomes afforded through approval of the original application, as modified. Further, we are satisfied that the refinements proposed will not compromise the streetscape or built form/ fabric retention outcomes achieved through approval of the original scheme.

As such, Council can be satisfied that the development as modified represents substantially the same development as originally approved and accordingly the application is appropriately dealt with by way of s4.55(2) 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 Architectural plans DA_000(C), DA_002(B), DA_003(E), DA_004(C), DA_005(C), DA_100(G), DA_101(G), DA_102(G) and DA_103(F) prepared by Bennett Murada. Specifically, the modifications involve:

SCHEDULE OF KEY AMENDMENTS:

01	SOUTHERN ELEVATION WINDOW ARRANGEMENT & WALL SETBACK LOCATION. NUMBER OF WINDOWS ARE REDUCED AND THE WALL IS ALIGNED TO THE 1M SETBACK.
02	GALLERY LOCATION AND ROOF ORIENTATION. THE GALLERY IS MOVED TOWARDS THE SOUTH BOUNDARY.
03	PAVILION ROOF FLATTENED AND SIMPLIFIED.
04	DRIVEWAY AND ENTRY PATH CONFIGURATION IS ADJUSTED AND INCLUDES A NEW SCREEN.
05	BIN STORE LOCATION
06	LOWER GROUND FLOOR ARRANGEMENT & STAIR LOCATION
07	GENERAL DOOR & WINDOW RECONFIGURATIONS
08	POOL STORE IN THE SPACE BELOW THE SUN ROOM
09	PAVILION GROUND FLOOR ARRANGEMENT & ENTRY RECONFIGURATION
10	LANDSCAPE BETWEEN SUN ROOM & NORTHERN BOUNDARY REVERTED BACK TO APPROXIMATE EXISTING GROUND LEVEL
11	POOL SHAPE AMENDED IN ACCORDANCE WITH CONDITION 19. OUTLINED IN DA2022/1715 APPROVAL. THIS INCLUDES A DIRECTIONAL PRIVACY SCREEN AT A 45 DEGREE ANGLE ON TOP OF THE POOL WALL.
12	MINOR INCIDENTAL PLANNING ARRANGEMENT CHANGES
13	PAVILION FIRST FLOOR RE ARRANGEMENT TO ALLOW FOR A LANDING AT THE TOP OF THE STAIRS

There previously approved geotechnical, biodiversity and landscape outcomes are maintained with this submission accompanied by updated stormwater plans and a BASIX Certificate.

Modifications to conditions of consent

Condition 1 - Approved Plans and Supporting Documentation

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

Condition 20 - Amendments to the approved plans

This condition can be deleted as the requirements have been incorporated into the modified plan bundle.

3.0 Section 4.55(2) of the Environmental Planning and Assessment Act 1979

Section 4.55(2) of the Act provides that:

- (2) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development 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 the consent was originally granted and before that consent as originally granted was modified (if at all), and*

.....

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.”

Consideration has also been given to the recent findings of the court in the matters of *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 1437 and *Canterbury-Bankstown Council v Realize Architecture Pty Ltd* [2024] NSWLEC 31.

What can be discerned from the findings in the above matters is that the Court approached its interpretation of the ‘substantially the same’ test in the following ways (consistent with the guidance of earlier Court decisions quoted throughout the Judgments).

- Comparing the quantitative differences between the proposed modified development against the original approved development.
- Comparing the qualitative differences between the proposed modified development against the original approved development.
- Comparing the critical elements of the proposed modified development against the original approved development.
- Most importantly, by then balancing the evidence in respect of all of those factual comparisons before forming a subjective opinion as to whether the proposed modified development was ‘substantially the same’ as the original approved development.

When one undertakes the above analysis in respect of the subject application it is clear that the approved development remains, in its modified state, alterations and additions to the existing dwelling house which will continue to spatially relate to its surrounds and adjoining development in a consistent manner as originally approved. The previously approved streetscape, privacy, solar access, view sharing. The fabric retention and general amenity outcomes afforded by the original application not compromised.

Accordingly, we are satisfied that the critical elements of the proposal are maintained, and that the quantitative and qualitative differences are not such as to render the developments not substantially the same.

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 significantly 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,
- The refinements proposed will not compromise the built form/ fabric retention outcomes achieved through approval of the original scheme, and
- The modifications have resulted from a desire to refine the detailing of the proposal in relation to internal layout efficiencies, buildability and general design quality, and

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(2) 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 Douglas Partners 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. In relation to clause 7.2 – Earthworks, we confirm that the findings contained within the previously approved geotechnical report prepared by Douglas Partners 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 7.2 of PLEP.
4. In relation to clause 7.6 - Biodiversity protection, the modifications do not have any additional impact on biodiversity characteristics of the site including previously retained trees and vegetation.

5. Pursuant to clause 7.7 - Geotechnical hazards, we confirm that the findings contained within the previously approved geotechnical report prepared by Douglas Partners are not altered as a consequence of the modifications sought.
6. 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:

- The approved bulk, scale and setbacks of the development are maintained with the works reflecting a general refinement in the detailing and buildability of the approved development.
- The modifications will not compromise the residential amenity or streetscape outcomes achieved through approval of the original scheme.
- The approved waste management and stormwater disposal arrangements are not compromised.
- 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.
- 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.
- The modifications do not compromise the approved landscaped area outcome.
- The refinements proposed will not compromise the streetscape or built form/fabric retention outcomes achieved through approval of the original scheme.

5.0 Conclusion

Council can be satisfied 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(2) of the Act.

We note that the majority of modifications are contained within the approved building footprint and envelope and in this regard, we are of the opinion that the modifications sought will not compromise the residential amenity outcomes afforded through approval of the original application, as modified. Further, we are satisfied that the refinements proposed will not compromise the streetscape or built form/ fabric retention outcomes achieved through approval of the original scheme.

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