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31 May 2016

The General Manager
Northern Beaches Council
Civic Drive
725 Pittwater Road
DEE WHY NSW 2099

Re: Development Application No.DA2015/1152
Lot 38 DP 8035, 67 Edgecliffe Boulevarde, Collaroy Plateau
Application pursuant to s96(2) of the EP & A, Act 1979

This is an application pursuant to s96(2) of the EP & A, Act 1979 to amend the above-mentioned development consent. The parent development consent was issued 27 January 2016.

To amend a development consent pursuant to s96, the requirements for an applicant to satisfy are prescribed in **section 115 of the Environmental Planning and Assessment Regulation 2000**. These requirements are set out as individual items in italics and a relevant comment to each follows below:

115 Application for modification of development consent
(cf clause 71A of EP&A Regulation 1994)

(1) An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act must contain the following information:

(a) the name and address of the applicant,

Comment: The name and address of the applicant is:

Mr. Ian Bennett, Studio Benicio, Suite 3/334 Barrenjoey Road, Newport Beach
NSW 2106 P.O. Box 1007

- (b) *a description of the development to be carried out under the consent (as previously modified),*

Comment: The approved development was described in the development consent as:

Demolition works, construction of a dwelling house, swimming pool and landscaping works.

- (c) *the address, and formal particulars of title, of the land on which the development is to be carried out,*

Comment: The address and formal particulars of title, of the land on which the development is to be carried out has been provided in the subject heading of this letter as well as in Council's application form.

- (d) *a description of the proposed modification to the development consent,*

Comment: Provide additional fill in the backyard to provide a level outdoor open space connecting to the main living areas of the dwelling in lieu of the approved step down. The architect has provided a detailed list of the amendments on the plans as follows:

1. *500mm wide planter box set 200mm off rear boundary. Planter wall height (RL 82.80) varies from 1500mm to 1900mm off rear boundary above natural ground level.*
2. *Retaining wall set 900mm off rear boundary. Wall height of retaining wall (RL83.50) or 700mm above planter wall.*
3. *Rear turf level raised and equivalent to terrace level.*
4. *Lap pool rear setback 900mm.*
5. *Landscaped area increased by 20.3m² due to removal of concrete steps to rear turf area.*

Proposed Modifications to the conditions of development consent are:

Condition 1 (a & b) of the development consent will be required to be amended to reflect the change in the drawing numbers and dates of the plans detailing the changes to the plans mentioned above.

- (e) *a statement that indicates either:*
- (i) *that the modification is merely intended to correct a minor error, misdescription or miscalculation, or*

- (ii) *that the modification is intended to have some other effect, as specified in the statement,*

Comment: The modification as proposed is intended to have some minor local effects which have been adequately discussed in the parent statement of environmental effects and assessed in Council's planning report on the original application as well as in the discussion of the following item.

- (f) *a description of the expected impacts of the modification,*

Comment: The proposed modification should not result in any additional impacts than otherwise anticipated under the recent approval.

The proposed modification includes a new retaining wall approximately 900mm inside the rear, north-eastern site boundary. The expected impact of the modification is limited to a visual one. The proposal, however, will not have any unreasonable visual impact.

There is mostly a minor and undetectable difference between the current approved dwelling and the proposed modification to it when the plans are compared in elevations. The differences are more apparent in sectional plans. The proposal effectively raises the ground level in the backyard to be approximately commensurate with the ground level of the dwelling.

Comparing the north east elevation of the current approved dwelling and the proposed modification, there is not a significant difference between the two. The height of the rear boundary wall is not altered. The most apparent difference is the height of the ground floor balustrade that is set 900mm inside the rear boundary on the new retaining wall. The set back of the balustrade from the rear, north-eastern boundary increases from 200mm to 1000mm.

The proposal includes a planter box with native grasses in front of the retaining wall, which will soften its appearance (See Dwg No A.12, Issue C in conjunction with Dwg A.06). As a result, the new rear retaining wall and the higher backyard level will be imperceptible. In any event, because of the significant slope of the land and the bush surrounds to the north-east, the retaining wall and different balustrade height will not be perceptible from any significant public vantage point. The variation between the proposed amendment and the approved plans could only be described as subtle.

It is also noted that the current approved plans included two on-site detention tanks and one rainwater tank in the backyard. The tops of these tanks are currently less than 100-200mm below finished ground level. The proposal will result in the top of the tanks being approximately 1000mm below finished ground level which will ensure that the lawn will thrive with deep soil conditions and, thereby, enhance the amenity of the outdoor space of the site.

It should also be noted that as a result of the removing the redundant concrete steps from rear of dwelling down to the lawn the architect provides 20m² of additional deep soil landscaping of the site, which is an environmental improvement and will also enhance the amenity of the dwelling without unreasonably compromising local amenity.

- (g) *an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,*

Comment: This report provides an undertaking that the development will remain substantially the same as the originally approved one as it is limited to landscaping and it is ancillary to the approved dwelling.

- (h) *if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),*

Comment: The application has been made by the applicant. Ian Bennett, Studio Benicio.

- (i) *a statement as to whether the application is being made to the Court (under section 96) or to the consent authority (under section 96AA), and, if the consent authority so requires, must be in the form approved by that authority.*

Comment: The application is not made to the Court under section s96AA.

- (2) *The notification requirements of clause 49 apply in respect of an application if the consent of the owner of the land would not be required were the application an application for development consent rather than an application for the modification of such consent.*

Comment: Not applicable. The owner's consent is supplied.

- (3) *In addition, an application for the modification of a development consent under section 96 (2) or 96AA (1) of the Act, if it relates to residential flat development for which the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A), must be accompanied by a design verification from a qualified designer, being a statement in which the qualified designer verifies that:*

- (a) *he or she designed, or directed the design, of the modification of the residential flat development, and*
- (b) *the residential flat development, as modified, achieves the design quality principles set out in Part 2 of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development, and*
- (c) *the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.*

Comment: Not applicable.

- (4) *If an application referred to in subclause (3) is also accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in that subclause need not be verified to the extent to which they aim:*
 - (a) *to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or*
 - (b) *to improve the thermal performance of the building.*

Comment: Not applicable.

- (5) *The consent authority may refer the proposed modification to the relevant design review panel but not if the application is for modification of a development consent for State significant development.*

Comment: Not applicable.

- (6) *An application for the modification of a development consent under section 96 (1A) or (2) of the Act, if it relates to development for which the development application was required to be accompanied by a BASIX certificate or BASIX certificates, or if it relates to BASIX optional development in relation to which a person has made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied), must also be accompanied by the appropriate BASIX certificate or BASIX certificates.*

Comment: The original BASIX certificate remains relevant and accompanies the application.

(7) *The appropriate BASIX certificate for the purposes of subclause (6) is:*

- (a) *if the current BASIX certificate remains consistent with the proposed development, the current BASIX certificate, and*
- (b) *if the current BASIX certificate is no longer consistent with the proposed development, a new BASIX certificate to replace the current BASIX certificate.*

Comment: See above comment.

(8) *An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act relating to land owned by a Local Aboriginal Land Council may be made only with the consent of the New South Wales Aboriginal Land Council.*

Comment: Not applicable.

(9) *The application must be accompanied by the relevant fee prescribed under Part 15.*

Comment: It is understood that the applicant has paid the appropriate Council fee.

(10) *A development consent may not be modified by the Land and Environment Court under section 96 of the Act if an application for modification of the consent has been made to the consent authority under section 96AA of the Act and has not been withdrawn.*

Comment: Not applicable.

CONCLUSION

The proposed amendment seeks to carry out minor alterations to the approved dwelling and it is limited to raising the backyard level to be approximately commensurate with the dwelling's ground floor. It includes the provision of a planter box bed with native grasses as well as increasing the lap pool setback from the rear, north-eastern boundary. The proposal will not materially alter the appearance of the building when it is viewed from the public domain or from adjoining neighbours for reasons discussed earlier. It is, therefore, proposed that Condition 1 be amended to reflect the plan references submitted with the application.

The proposal is substantially the same development as originally approved. Therefore, this report has concluded with an undertaking that the development

will remain substantially the same as the originally approved development in accordance with Section 115, subsection (f) of the Environmental Planning and Assessment Regulation 2000.

The proposal maintains the form of the original building in terms of its building footprint, height and envelope. The proposal has no significant material impact on the building's street appearance or from any other places visible in the public domain.

Overall, the proposed amendment is consistent with the objectives of the Residential zone pursuant to the Warringah Local Environmental Plan 2011.

Therefore, the proposed amendment is suitable for approval.

A handwritten signature in black ink, appearing to read 'Kim Burrell', with a stylized, cursive script.

Kim Burrell
B. App. Sc. DURP MPIA CPP
Town Planner