

15th April 2025

The CEO
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

Statement of Environmental Effects
Modification of Development Consent DA 2022/1675 + MOD2024/0570
Alterations and additions to a dwelling house and construction of a swimming pool
57 Cutler Road, Clontarf

1.0 Introduction

On 27th June 2023 development consent was granted to DA 2022/1675 proposing alterations and additions to a dwelling house and construction of a swimming pool on the subject allotment. Subsequently MOD2024/0570 was granted approval on 18th December 2024.

We have been engaged to prepare an application to modify the consent pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the Act). Specifically, the modifications seek a further reduction in the scope of approved works including the deletion of the timber cladding to the external walls and the stone cladding to external blade wall.

The application also proposes a minor change to the roof pitch on the upper roof to allow for more cost effective roof sheeting reducing the overall cost of construction.

The consent authority can be satisfied that the proposal remains, in its modified state, an application proposing alterations and additions to a dwelling house and the construction of a swimming pool, with the proposed modifications not compromising the streetscape or residential amenity outcomes afforded through approval of the original application in terms of views, privacy or solar access.

Under such circumstances, the modified proposal represents substantially the same development as originally approved and accordingly the application is appropriately dealt with by way of Section 4.55(2) of the Act.

This Statement of Environmental Effect to be read in conjunction with the main SOEE



2.0 Detail of Modifications Sought

The proposed modifications are shown clouded on the following Architectural plans:

Specifically, the modifications are as follows:

A-05

- Upper roof increase pitch to 5d to allow for custom orb roof sheeting for cost saving
- Timber wall cladding removed to be replaced with render
- Blade wall stone cladding removed to be replaced with render

A-06

- Upper roof increase pitch to 5d to allow for custom orb roof sheeting
- Timber wall cladding removed to be replaced with render

A-07

- Upper roof increase pitch to 5d to allow for custom orb roof sheeting

This application also seeks the modification of Condition 1 to reflect the amended plans the subject of this application.

3.0 Section 4.55 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."

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, an application proposing alterations and additions to the existing dwelling house which will continue to relate to its surrounds and adjoining development in a manner consistent with that sought through approval of the original application.

The previously approved streetscape, privacy, solar access, view sharing and general amenity outcomes afforded by the original approval are not compromised.

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 and residential density do not change,
- The building form, footprint, height, floor space, car parking, landscaping and drainage circumstances are not significantly altered,
- The proposal maintains a complimentary and compatible streetscape presentation as depicted in the comparative images over page, and
- The modifications maintain the previously approved/ intended residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk and overshadowing and view sharing.



Figure 1 - Approved streetscape presentation





Figure 2 - Proposed modified streetscape presentation

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 Manly Local Environmental Plan 2013

Zoning and permissibility

The subject property is zoned R2 Low Density Residential pursuant to Manly Local Environmental Plan 2013 (“MLEP 2013”) with dwellings permissible in the zone with consent. The stated objectives of the zone are as follows:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development will remain in its modified form permissible with consent and consistent with the zone objectives as outlined. Accordingly, there is no statutory zoning or zone objective impediment to the granting of approval to the modifications sought.

Height of Buildings

Pursuant to Clause 4.3 of MLEP 2013, the height of a building on the subject land is not to exceed 8.5 metres in height. We confirm that the overall height of the approved development has a maximum height of 9.38m. That said, the replacement of the flat roof with a skillion roof form results in a minor reduction in overall building height across the proposed upper-level roof form including consequential reduction in overshadowing.

Under such circumstances, we are satisfied that the overall building height not only remains consistent with that originally approved but will remain consistent with the objectives of the building height standard such that strict compliance is unreasonable and unnecessary.

Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 230.6 square metres. The stated objectives of this clause are:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

We confirm that the proposed modifications do not alter the previously approved GFA/FSR and to that extent the development will continue to satisfy the objectives of the FSR standard to the extent that strict compliance is unreasonable and unnecessary.

Foreshore Scenic Protection Area

Pursuant to clause 6.9 the subject site is located within a foreshore scenic protection area. The development as modified will not result in any adverse impact to the scenic quality of the area or impact on the visual amenity of the Harbour foreshore. The proposed works will not be readily discernible from the foreshore area and in any event will not be perceived as inappropriate or jarring have regard to the built form characteristics established within the site's visual catchment. These provisions are satisfied.

Sincerely,

Luke Trovato B.Arch
Board of Architects Registration : 7094

