

Strategic Planning Referral Response

Application Number:	Mod2025/0134
Proposed Development:	Modification of Development Consent DA2021/0412 granted for Demolition works and Construction of a dwelling house on proposed Lot 1
Date:	11/04/2025
To:	Lachlan Rose
Land to be developed (Address):	Lot 6 DP 18433 , 17 Maretimo Street BALGOWLAH NSW 2093

Officer comments

ASSESSMENT OF MODIFICATION APPLICATION

The proposed modification application (Mod2025/0134) seeks to modify the development consent DA2021/0412 by removing condition 5 in the determination, related to development contributions payable.

There are no physical changes proposed to the works approved under DA2021/0412.

In the statement of modification (TRIM 2025/213621), the applicant has stated the following in relation to development contributions:

This condition [condition 5] needs to be rectified. It appears to be an administration error and request this condition be deleted. The amount of \$7,623 is not to be charged as a payment of a 7.12 contribution of \$20 000 was made at subdivision stage [DA 219/2016].

For background, DA 219/2016 was determined 9 November 2016 (TRIM MC/16/146135) for demolition of existing garage, construction of a new driveway including parking spaces and a vehicle turning platform, drainage works and 2 lot Torrens Title Subdivision. The former Manly section 94 Contributions plan was applicable at the time of determination for DA219/2016. Condition 11 of the determination stated the following:

11 (2US01)

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development including a two (2) lot Torrens Title Land Subdivision is \$20,000.00, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

Council received payment of \$20,000 on 23 October 2023 (TRIM 2025/235972).

It is important to note DA219/2016 is a separate application to the current DA/Mod applications, and are not related.

The parent application (DA2021/0412) to the current modification application (Mod2025/0134) is captured under the Northern Beaches 7.12 Contributions Plan 2021.

Section 7.12 of the Environmental Planning and Assessment Act 1979 authorises Council to impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage

of the proposed cost of works, authorised by a contributions plan.

Section 2.5 of this plan (2021) identifies the types of development that are exempt from paying contributions. At the time of determination for parent application DA2021/0412, the development was not considered exempt, therefore a contribution levy is applicable and was correctly calculated in accordance with section 2.7 of the 2021 plan.

Unlike the Northern Beaches 7.12 Contributions Plan 2024 plan, the 2021 plan (applicable to DA2021/0412) does not include the following section related to credits:

6.5 Credit of contributions

A credit may be considered for a new application where:

- a) a development consent already exists on the property and the contribution condition under that consent has been satisfied, and*
- b) in the opinion of Council, the subsequent development is generally the same development approved on the land.*

Notwithstanding, the opportunity for a credit would not be applicable in this case, as the works approved under DA219/2016 and DA2021/0412 are not the same. A summary of the approved works under each DA are as follows:

DA Application	Applicable Contribution Plan	Approved works
DA219/2016	Manly section 94 Contributions Plan	Demolition of existing garage, construction of a new driveway including parking spaces and a vehicle turning platform, drainage works and 2 lot Torrens Title Subdivision
DA2021/0412	Northern Beaches Section 7.12 Contributions Plan 2021	Demolition works and construction of a dwelling house on proposed Lot 1.

Further, it is noted in *Buoyozo v Kuring-gai Council* [NSWCA 177, 13 August 2021] a consent authority does have power to modify a condition of consent for contributions under section 4.55(1) of the EP&A Act, if the modification is only to correct a minor error, misdescription or miscalculation in the development consent (Preston CJ at paragraphs 66-67). The subject application has been lodged under section 4.55(1). In relation to the parent application DA2021/0412, the development contributions were calculated correctly, based on the cost of works provided at the time of determination. No miscalculation has occurred.

Given the works approved under the two separate DAs are not the same, the contribution amount was correctly calculated for DA2021/0412 and the works approved under DA2021/0412 are not exempt from paying contributions, the modification application to remove condition 5 is not supported.

RECOMMENDATION

1. The modification application to remove condition 5 of the consent is not supported because:

- a. DA219/2016 and DA2021/0412 are two separate development applications, and the approved development under each DA are not the same.
 - b. The development approved under DA2021/0412 is not exempt from paying contributions, as per section 2.5 of the Northern Beaches 7.12 Contributions Plan 2021.
 - c. The contribution levy was correctly calculated for DA2021/0412.
2. Condition 5 of the consent for DA2021/0412 is to remain in place.

The proposal is therefore unsupported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Strategic Planning Conditions:

Nil.