

Section 4.55(1) Application – DA2025/0673 - Strata Subdivision into two lots - at 52 Alfred Street Brookvale

Dear Claire Ryan – Principal Planner,

This letter is in support of a Section 4.55(1) application under the EP&A Act 1979, seeking deletion of Condition 2 of DA2025/0673 titled “Housing and productivity contribution - Development consents”.

Under Section 4.55(1) of the EP&A Act 1979 modifications may be submitted involving a minor error made on a development consent, as follows:

- (1) **Modifications involving minor error, misdescription or miscalculation** 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 a development consent granted by it to correct a minor error, misdescription or miscalculation.*

It is submitted that Condition 2 was placed in error.

Condition 2 of the development consent requires the payment of Housing and productivity contribution (HPC) fee.

We have reviewed the [Housing and Productivity Contribution Ministerial Planning Order 2024 \(2\).pdf](#) and based on the 2024 Order, we understand that the HPC is not applicable to Strata Subdivision of an existing dual occupancy. We note Council's assessment report makes reference to the 2023 order, however, the new order is applicable to our application having commenced 1 July 2024. We believe the HPC is not applicable for the following reasons:

- 1) Clause 5 of the 2024 order identifies development for which the HPC is applicable. Clause 5(1) identifies it is applicable to 'residential development'.

Clause 5(2) then defines what residential development is, which includes 'residential subdivision' and 'medium or high-density residential development'.

Clause 5(2)(a) defines residential subdivision as:

*(a) subdivision of land (**other than strata subdivision**) on which development for the purposes of residential accommodation is permitted with development consent by an environmental planning instrument applying to the land (residential subdivision),*

Based on the above, strata subdivision is excluded from the definition of 'residential subdivision'.

Clause 5(2)(b) states the HPC is applicable to 'medium or high-density development' which is defined later in the 2024 order as meaning '*development for the purposes of medium or high-density residential accommodation*'. The application does not propose to erect any new dwellings of this nature, nor is it development for this purpose. The application is for strata subdivision only.

- 2) Clause 12 also confirms that '*Residential subdivision does not include strata subdivision of residential accommodation*' when calculating the HPC.
- 3) Schedule 1 Definitions and Interpretation excludes a 'strata lot' from the definition of a 'lot' in The Order.

We respectfully submit that Condition 2 has been placed in error and is not applicable to DA2025/0673 in accordance with the 2024 Order. As such, we seek deletion of Condition 2 under this Section 4.55(1) Application.

Yours sincerely,

The Owners of 52 Alfred Street Brookvale