

Memo

Environment

To:	Rodney Piggott , Development Assessment Manager
From:	Catriona Shirley, Planner
Date:	6 November 2020
Application Number:	Mod2020/0549
Address:	Lot 101 DP 611231 , 26 Whistler Street MANLY NSW 2095
Proposed Modification:	Modification of Development Consent 2019/0645 granted for demolition works, construction of a residential flat building and strata subdivision

Background

The above-mentioned development consent was granted by the Northern Beaches Local Planning Panel on 18 March 2020 for the demolition works and construction of a residential flat building and strata subdivision at 26 Whistler Street, Manly.

Details of Modification Application

Under Section 4.55(1) of the EPA Act 1979, a consent containing an error or mis-description may be amended. The Northern Beaches Community Participation Plan does not require the notification of Section 4.55(1) modification applications as they are considered to be of minimal environmental impact.

The Northern Beaches Local Planning Panel (NBLPP) approved development application (DA2019/0645) on the 18 March 2020, however it was identified that a monetary contribution payable was not included by way of condition of consent. As a result this modification seek to facilitate the imposition of a condition requiring the payment of the required S7.12 Contribution prior to issue of the Occupation Certificate in line with the current Ministerial Direction as it relates to the payment of contribution during the prescribed COVID 19 period.

The application also seeks to re-issue the correct stamped draft strata plans dated 28th January 2020 that are correctly listed within Condition 1.

Finally the application seeks to modify condition **No.22 Right of Way**, which reads as follows:

The existing right of way along the southern boundary of the subject site is to be extended to a width of 3m. The amended right of way is to be registered on title. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure consistency with the consent.

Consideration of error or mis-description

Modification of Condition No. 22 Right of Way

Condition No.22 was applied by the Northern Beaches Council Local Planning Panel to ensure that the existing Right Of Way (ROW) is extended to a width of 3m to improve the pedestrian outcome of the development.

However, the condition requires the ROW to be registered on title prior to the issue of the Construction Certificate. The applicant seeks to modify Condition No. 22 so the ROW is registered on title prior to the issue of the Occupational Certificate.

The conditioned area for the ROW is located wholly within the subject site, and this additional area will be required during construction.

The requirement for the ROW to be registered on title prior to the issue of the Construction Certificate also unreasonably delays the issue of a Construction Certificate and the commencement of works on site.

As a result, it is considered that the modification of condition No. 22 Right of Way to require the registration of the amended ROW on title prior to the issue of the Occupation Certificate will continue to achieve the desired result of the condition with a more appropriate timing during the project.

The applicants justification is generally supported and it is recommended that condition number 22 be amended to register the ROW on title prior to the Occupation Certificate.

Accordingly, the condition be modified to read as follows:

22. Right of Way

The existing right of way along the southern boundary of the subject site is to be extended to a width of 3m. The amended right of way is to be registered on title. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure consistency with the consent.

Stamped Draft Strata Plan

Condition 1 of the consent correctly refers to draft strata plan sheets 1 of 6 to sheet 6 of 6, dated 28th January 2020, prepared by Copeland C. Lethbridge. However, an error was made and the incorrect strata plans were stamped and issued, i.e. the stamped plans are a previously submitted set with a date of the 18th June 2019.

As a result the correct draft strata plans dated 28th January 2020 are to be stamped and reissued as part of the of the modified consent.

Section 7.12 Contributions

Development Application, DA2019/0645 was lodged on 24 June 2019 for the demolition of existing residential flat building and construction of an eight-storey residential flat building containing 41 apartments and parking for 57 vehicles in both ground and basement level on the subject site. The estimated cost of work for this development is \$21,320,155.00.

The Northern Beaches Local Planning Panel (NBLPP) approved the application on 18 March 2020, however it was identified that a monetary contribution payable was not included via a condition of consent.

The relevant contribution plan for this proposal is the Northern Beaches Section 7.12 Contributions Plan 2019.

Given the estimated development cost of \$21,320,155.00, a contribution amount of \$213,201.55 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979, and the Northern Beaches Section 7.12 Contributions Plan 2019. The contribution is calculated as 1% of the total development cost of \$21,320,155.00. The monetary contribution may be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index.

Changes to the Environmental Planning and Assessment Act 1979 (EP&A Act) in response to the COVID-19 pandemic allow the Minister to make directions on the timing of infrastructure contributions payment. The new Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020 (Direction dated 25 June 2020) relates to local contributions or levies (sections 7.11 and 7.12). This Direction temporarily allows councils to defer the payment of local infrastructure contributions and levies until at least the issuing of the first occupation certificate.

However, if there is no construction certificate issued before or on 25 September 2022, the monetary contribution must be paid before the issue of the construction certificate after that date for any such building.

As a result, the Policy Control Northern Beaches 7.12 Contributions Plan 2019 condition will be included with payment prior to issue of the Occupation Certificate in line with the current Ministerial Direction as it relates to the payment of contribution during the prescribed COVID 19 period.

Accordingly, the conditions to be added to the consent are to read as follows:

Condition Number 6A - Policy Controls Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$213,201.55 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$21,320,155.00.

The monetary contribution that is required to be paid under the conditions of this consent must be paid before the issue of the first occupation certificate in respect of any building to which this consent relates, except as provided by condition 6B.

If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au.

This fee must be paid prior to the issue of the Occupation Certificate. Details demonstrating compliance

are to be submitted to the Principal Certifying Authority.

Reason: COVID-19 Response measures: Ministerial Directions – Infrastructure contributions.

Condition Number 6B Timing of Northern Beaches 7.12 Contributions Plan 2019

If no construction certificate in respect of the erection of any building to which the consent relates has been issued before or on 25 September 2022, the monetary contribution listed in condition 6A must be paid before the issue of the construction certificate.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: COVID-19 Response measures: Ministerial Directions – Infrastructure contributions.

Conclusion

It is considered that the modification is minor in nature and consistent with the provisions of section 4.55(1) of the EPA Act 1979 and is therefore recommended for approval.

Recommendation

THAT Council as the consent authority approve Modification Application No. Mod2020/0549 for Modification of Development Consent 2019/0645 granted for demolition works, construction of a residential flat building and strata subdivision on land at Lot 101 DP 611231,26 Whistler Street, MANLY, as follows:

A. Add Condition No.6A Policy Controls Northern Beaches 7.12 Contributions Plan 2019 to read as follows:

A monetary contribution of \$213,201.55 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$21,320,155.00.

The monetary contribution that is required to be paid under the conditions of this consent must be paid before the issue of the first occupation certificate in respect of any building to which this consent relates, except as provided by condition 6B.

If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

This fee must be paid prior to the issue of the Occupation Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: COVID-19 Response measures: Ministerial Directions – Infrastructure contributions.

A. Add Condition 6B Timing of Northern Beaches 7.12 Contributions Plan 2019 to read as follows:

If no construction certificate in respect of the erection of any building to which the consent relates has been issued before or on 25 September 2022, the monetary contribution listed in condition 6A must be paid before the issue of the construction certificate.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: COVID-19 Response measures: Ministerial Directions – Infrastructure contributions.

B. Modify Condition Number 22 Right of Way to read as follows:

The existing right of way along the southern boundary of the subject site is to be extended to a width of 3m. The amended right of way is to be registered on title. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure consistency with the consent.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Catriona Shirley, Planner

The application is determined on 06/11/2020, under the delegated authority of:



Rodney Piggott, Manager Development Assessments