

4 July 2023

Our Ref: 251-20

General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Attention: Manager, Development Assessment

Dear Sir / Madam,

**Re: S.4.55(1A) Application to Modify Development Consent DA-2020/1727
121 Dove Lane Warriewood**

On behalf of The Trustee For Morehuman Warriewood Unit Trust, please find enclosed an application to modify consent for the subject DA pursuant to Section 4.55(1A) of the *Environmental Planning & Assessment Act 1979* (the Act).

1 BACKGROUND

DA-2020/1727 was approved by Council under delegated authority on 20 August 2021 for the subdivision of one lot into three lots.

In order to facilitate the approved subdivision, the following civil works are required to be undertaken:

- Construction of retaining wall
- Construction of stormwater drainage
- Bulk Earthworks/Shaping of batter

However, no civil plans were stamped or referenced in the notice of determination. The Delegated Assessment report incorrectly states that:

“no further works [are] required under the proposed application to create roads or services and drainage being subject to a current S138A Application submitted to Council currently.”

A private certifier has now been appointed to provide a subdivision works certificate. However, as no works were detailed in the approved documentation, the certifier is unable to certify that the required works are in accordance with the approved plans or works.



This application seeks to amend the conditions of consent to include reference to civil engineering plans, in order to rectify this situation. It has been prepared in accordance with S.4.55(1A) of the Act and provides:

- An overview of the previous development consent and statutory context
- A description of the proposed modification
- An assessment against the requirements of S.4.55 of the Act, including consideration of the likely impacts.

The assessment finds the development will remain substantially the same as that for which the consent was originally granted, notwithstanding the modifications.

2 CONCURRENCE & APPROVAL AUTHORITIES

Under Section 109 of the Environmental Planning and Assessment Regulation 2021, Council:

(1) ...Must give a copy of the application to

(a) if the modification affects a condition imposed by a concurrence authority—the concurrence authority, and

(b) if the modification affects the general terms of approval of an approval body—the approval body.

A review of the Delegated Assessment Report reveals that:

- The modification does not affect any condition imposed by a concurrence authority, noting there were no concurrent authorities in this instance.
- General terms of approval (GTAs) were imposed by an approval body (in this case, the NSW RFS). However, the modification in no way affects the GTAs.

Therefore, Council is not required to notify the application to any concurrence authority of approval authority.



3 PROPOSED MODIFICATIONS

This application seeks to include civil engineering plans to the list of approved plans under condition 1 (a) of the Notice of Determination, as set out below. Additional words are shown in red.

Consent condition 1 – Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Drawing No.	Dated	Prepared By
Architectural Plans - Endorsed with Council's stamp		
Ref 25 251-20, Rev 02	17/06/2021	Craig & Rhodes
251-20C-DA-1001, Rev A	4/07/2023	Craig & Rhodes
251-20C-DA-1002, Rev A	4/07/2023	Craig & Rhodes
251-20C-DA-1003, Rev A	4/07/2023	Craig & Rhodes
251-20C-DA-1101, Rev A	4/07/2023	Craig & Rhodes
251-20C-DA-1701, Rev A	4/07/2023	Craig & Rhodes
251-20C-DA-1702, Rev A	4/07/2023	Craig & Rhodes
251-20C-DA-1703, Rev A	4/07/2023	Craig & Rhodes
251-20C-DA-1711, Rev A	4/07/2023	Craig & Rhodes
251-20C-DA-1901, Rev A	4/07/2023	Craig & Rhodes
251-20C-DA-1902, Rev A	4/07/2023	Craig & Rhodes
Reports / Documentation – All recommendations and requirements contained within:		
Acid Sulfate Soils Assessment, RF JE17655A-r3	13 June 2018	GeoEnviro Consultancy
Arboricultural Impact Appraisal and Method Statement	10 December 2020	Naturally Trees
Stormwater Management Report, Ref 251-20	2 December 2020	Craig and Rhodes
Bushfire Protection Assessment, Version 1	1 July 2021	Eco Logical Australia



4 PLANNING AND ENVIRONMENTAL ASSESSMENT

4.1 Section 4.55(1A):

Section 4.55 (1A) of the EP&A Act states:

A consent authority may, on the 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 the consent if:

Table 1: Planning and Environmental Assessment of the Proposed S4.55(1A) Modification Application

Section 4.55 (1A) Provision	Comment
<i>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</i>	The proposed modification results in only minor changes to the approved development by including a retaining wall and inter-allotment drainage. This will have only minimal environmental impact.
<i>(b) 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</i>	The proposed amendment relates solely works required to facilitate the approved development. The development therefore remains substantively the same; no changes are sought to the lot yield or lot sizes or shape.
<i>(c) it has notified the application in accordance with: i. the regulations, if the regulations so require, or ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of development consent, and</i>	Notification of the application is not required in this instance as there is no change to lot yield, size or shape. The application relates to minor civil works which create no amenity impacts.
<i>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</i>	Should Council proceed to public notification, submissions are to be considered, as required by Council's policies.



4.2 Section 4.55(3)

Section 4.55(3) of the EP&A Act states:

In determining an application for modification of consent under this section, the consent authority must take into consideration the matters referred to in section 4.15(1) as are of relevance to the development of the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The matters for consideration under Section 4.15(1) of the EP&A Act are considered in **Table 2**.

Table 2: Matters for consideration under S. 4.15(1)

Provision	Comment
(a) The provisions of:	
(i) any environmental planning instrument, and	The original DA addressed the development's level of compliance against relevant planning instruments/ The proposed modification will not impact the approved development's compliance with the relevant planning instruments.
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	Not applicable.
(iii) any development control plan, and	The proposed modification will not impact the approved development's compliance with the provisions of the relevant DCP.
(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	The proposed modification will have no affect on the existing planning agreement in place.
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph) (v) (Repealed)	There are no known matters prescribed by the Regulations that are relevant to the consideration of this application.
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	Any impacts resulting from the proposed modification are anticipated to be minor and manageable.



Provision	Comment
<i>(c) the suitability of the site for development,</i>	The proposed modification does not change the site's earlier assessment as suitable for the development.
<i>(d) any submissions made in accordance with this Act or the regulations,</i>	The application will be notified (if required) in accordance with Council's notification policy. Any submissions received will be considered.
<i>(e) the public interest.</i>	The original DA addressed public interest. Given the proposed modification seeks only minor civils works to facilitate the approved development, it is considered to be in the public interest.

5 CONCLUSION

The proposed modifications satisfy the provisions of Section 4.55 (1)(A) of the Act in that the development as modified would be substantially the same development as that for which the consent was originally granted.

Further, the amended development would continue to comply with the relevant provisions of Section 4.15 (1) of the Act. In particular, it fully complies with all relevant controls within the applicable environmental planning instruments and DCP.

No significant additional environmental impacts related to the proposed modifications are anticipated. On this basis, this application is recommended for approval.

Please contact the undersigned if you have any questions or require any further information.

Yours faithfully,

Beau Hunter
Project Manager

CRAIG & RHODES PTY LTD