

28<sup>th</sup> April 2025

The General Manager  
Northern Beaches Council  
PO Box 82  
MANLY 1655

Dear Sir/Madam

**SECTION 4.55(2) MODIFICATION - DEMOLITION WORKS AND  
CONSTRUCTION OF A DWELLING HOUSE INCLUDING LANDSCAPING  
WORKS  
30 RAYNER ROAD, WHALE BEACH  
DA2023/1505**

On behalf of the owners of the subject property, application is hereby made pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979, as amended, for the modification of the subject consent.

By way of background, Development Consent No. 2023/1505 was approved by Council on the 10<sup>th</sup> May 2024 and granted consent to *construction of a dwelling house, including landscaping works* subject to conditions.

This application which seeks approval for the modification of the application and is to be read in conjunction with the following documentation:

- Amended Architectural Plans prepared by J Group Projects, Project No. JG30, MOD00 – MOD13, Revision 1 and dated 06/03/2025.
- Amended Stormwater Management Plans prepared by Partridge Hydraulic P/L, Job No. 2023H0172, Revision A and dated 24/3/25.
- Arborists Report prepared by Footprint Green P/L dated 07/03/2025.
- Geotechnical Report Addendum Letter prepared by Crozier Geotechnical Consultants, Project No 2023-170.1 and dated 14/03/2025.
- Ecological Report prepared by GIS Environmental Consultants and dated 27/03/2025.
- Coastal Management Report prepared by Horton Coastal Engineering and dated 6/3/25.
- Construction Traffic Management Plan prepared by Roadside Traffic Management, Version 1.2 and dated 17/06/2024.
- Construction Traffic Management Addendum Letter prepared by J Group Projects P/L and dated 31/03/2025.
- Work Method Statement – Excavation prepared by J Group Project P/L and dated 31/03/2025.
- BASIX Certificate No. 1416486S\_03 and dated 15/4/25.

- NatHERS Thermal Performance Optimisation Report prepared by Sustainably Certified and dated 02/04/2025.
- Waste Management Plan.
- Lighting Specification.

## **The Proposal**

The proposal seeks approval for the modification of Condition 1 of the consent so as to reference the amended plans and documentation and which accompany this application.

The proposal also seeks approval for the following modifications as outlined in the schedule of amendments as detailed on the accompanying architectural plans:

### **1. Proposed Extension of Canopy over Stair 2**

The proposal seeks a minor extension of the approved roof canopy to the west and south. The primary purpose of the roof extension is to provide weatherproofing to Stair 2.

### **2. Continuation of Lift to Level 1**

The approved lift structure is to be extended downward to level 1 so as to provide access to the extension of level 1, as detailed below.

### **3. Continuation of Stair 2 down to Level 2**

Stair 2 is to be extended downward to level 2 so as to provide external access to level 2 and the associated padel court without the need to enter the dwelling. The extension of stair 2 will also require a small extension of level 2 via an excavated corridor so as to link the two elements.

### **4. Extend Services under Padel Court (Level 1 Extension)**

Level 1 is to be extended below the approved padel court. The extension is to be excavated into the bedrock on the site and will not add to the bulk and scale of the structure. The extension to level 1 will be accessed via a downward extension of the lift. The additional floor space will be used for service rooms including extending the plantroom, a rainwater tank room, lift control, comms/security, general storage and access hallway.

A series of reports have been prepared in support of the additional excavation and in addition to the submitted geotechnical report, includes a Comprehensive Construction Traffic Management Plan (CTMP). The CTMP outlines traffic control methods to manage the anticipated increase in traffic and truck movements on Rayner Road associated with the removal of additional excavated material. The submitted documentation is considered to appropriately address and manage the safety risks and logistical tasks associated with the additional excavation associated with the proposal.

## **5. Addition of Outdoor Lighting to Padel Court**

The proposal seeks approval for the addition of outdoor lighting to the approved padel court. Lighting is to be provided via four lighting posts.

Specifications of the proposed lighting forms part of the information accompanying this application.

It is understood that lighting associated with the padel court will largely be contained within the area of the court.

## **6. Proposed Extension to Bin Storage**

The proposal seeks approval for a minor extension to the approved bin storage area through the squaring off of the approved bin storage space. The proposed extension of the bin storage area will align with the minor roof modification outlined at Point 1.

## **Deletion of Condition 12**

Further to the above modifications, this proposal also seeks the deletion of Condition 12 from the Notice of Determination. This condition is not considered necessary as there are no on-slab planters proposed/approved as part of the application. The deletion of this condition is simply administrative and will not result in any material changes to the proposed development.

All other aspects of the proposal will remain the same.

## Impacts of the Proposal

It is my opinion that the proposed modifications proposed by this application will not result in any detrimental impacts. In this regard it is noted that:

- The amended proposal will result in development substantially the same as that originally approved by the Council.
- The proposal will not result in an increase in height of the proposal, or the built upon area.
- The proposal will not result in a perceivable impact upon the perceivable landscape are of the site.
- The proposal despite the proposed additional excavation will not result in any alterations to geotechnical aspects of the proposal. The following excerpt is provided from the accompanying geotechnical report:

*“The proposed changes to the original design do not significantly alter the geotechnical aspects of the proposed development or the site from those on which the original report was based and although additional excavation is proposed, it does not significantly impact the recommendations of the original geotechnical report”*

- The modifications will result in additional excavation works compared to the approved proposal. Where additional adverse impacts associated with the additional excavation have been identified, the supporting documentation is considered to appropriately address and mitigate these impacts. Supporting documentation relevant to the proposed additional excavation works include the accompanying Construction Traffic Management Plan, Geotechnical Report and Waste Management Plan, as outlined earlier in this report.
- The proposal will have a minor negative impact on flora & fauna, which is considered to be negligible as per the following excerpt from the accompanying Flora & Fauna Report:

*“In conclusion, the changes proposed in the s4.55 modification will have a slightly increased negative impact to native flora and fauna, however, they*

*are insignificant and do not change the conclusions of the Flora and Fauna report.”*

- The proposal continues to provide for a landscaped setting which reduces the bulk, scale and associated amenity impacts on neighbouring properties.
- The proposal will not result in additional tree impacts compared to that approved under DA2023/1505, as identified in the accompanying arborist’s report:

*“In terms of potential impact on trees identified as being retained in the Development Consent 2023/1505, the additional works in this s.4.55 Modification are largely within the currently approved building footprint in DA2023/1505.”*

- There will be no significant changes to the proposed development as viewed from the street. Changes to the roof overhang and garbage enclosure are considered to be minor in nature and not result in any unreasonable impacts.
- The proposal is still considered to appropriately store and dispose of stormwater, as evident in the accompanying Stormwater Management Plan accompanying this application.

#### **Section 4.55(2) – Other Modification – Environmental Planning & Assessment Act 1979, as amended**

Section 4.55(2) of the Environmental Planning & Assessment Act 1979, as amended, permits an applicant to seek approval for the modification of a development consent in the following circumstances:

##### **(2) Other modifications**

*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 the 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 consent was originally granted and before that consent as originally granted was modified (if at all), and*

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (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 a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development 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.*
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*
- (5) (Repealed)*

In response to the requirements of Section 4.55(2)(a) of the Act it is submitted that the proposal will remain substantially the same development for which consent was originally granted.

In forming this opinion, it is submitted that:

- The proposal will continue to provide for development similar to that approved by DA2023/1505 which will include a dwelling house and landscaping works
- Other residential amenity considerations such as private open space, setbacks and landscaped area will remain largely the same as that approved by the Council.

- The proposal will result in only minor environmental impacts compared to that approved under DA2023/1505.

### **Section 4.15(1) of the Environmental Planning & Assessment Act 1979**

The following assessment is provided against the requirements of Section 4.15(1) of the Act.

#### **Environmental Planning Instruments – Section 4.15(1)(a)(i)**

The proposed development remains permissible with the consent of the Council under the provisions of Pittwater LEP (2014).

The proposal is considered to remain consistent with the original approval of DA2023/1505 and therefore should be supported by Council.

#### **Draft Environmental Planning Instruments – Section 4.15(1)(a)(ii)**

It is not considered that there are any Draft Environmental Planning Instruments applicable to the proposal.

#### **Development Control Plans – Section 4.15(1)(a)(iii)**

It is considered that the proposal remains consistent with the applicable requirements of the Pittwater DCP.

#### **Impacts of the Development – Section 4.15(1)(b)**

It is my opinion based upon the findings of this report and the accompanying documentation that there will not be any unreasonable impacts resulting from the proposal.

#### **Suitability of the Site – Section 4.15(1)(c)**

It is my opinion that the suitability of the site for this form of development has previously been demonstrated through the granting of the original consent.

It is therefore considered that in the absence of any unreasonable impacts attributable to the proposal that the site is suitable for the modified development as proposed.

#### **Public Interest – Section 4.15(1)(e)**

It is my opinion that the proposed development is in the public interest as it is substantially the same as DA2023/1505.

It is not considered that the proposed modifications will result in any adverse impacts upon adjoining properties or the locality.

### **Summary**

In summary, it is my opinion that the modifications proposed by this application will result in development substantially the same as that previously approved by the Council and will not result in any unreasonable impacts.

Accordingly, it is considered that the changes proposed are worthy of the support of the Council.

It is requested that should you have any queries regarding this matter that you do not hesitate to contact me to discuss.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'A. Minto', written in a cursive style.

Andrew Minto  
DIRECTOR