

25 August 2021

Northern Beaches Council
PO Box 82
Manly NSW 1655

Attn: Development Assessment Team,

RE: Section 4.55(1A) Modification to Development Consent (DA2018/1771) at 1 Surfview Road, Mona Vale

1. Introduction

We write on behalf of *Northern Beaches Council Property / Building Assets* (the proponent) to request modification of development consent DA2018/1771 pursuant to Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* (the Act). This application proposes modifications to DA2018/1771, dated 18 February 2019 and modified 29 November 2019 (Mod2019/0454), granted for *demolition of the existing surf club building and construction of a new surf club building including a café, restaurant, and function space*.

The proposed modification is being sought under Section 4.55 (1A) of the Act, which relates to modifications involving minor environmental impact. The modification proposes:

- Minor alterations and additions to new surf club building including redesign of café pergola;
- Amendment to development consent conditions to enable a part occupation certificate for the Surf Life Saving Club, café and restaurant;
- Amendment to development consent condition 39 requiring a post dilapidation report be completed for the site prior to issue of occupation certificate; and
- Amendments to development consent condition 44 which relates to hours of operation.

These modifications, which relate to minor design and consequential administrative changes, are a consequence of ongoing design development, project delivery requirements and operational needs. This application should be read in conjunction with the following documentation:

- Updated Architectural Plans, prepared by *Warren and Mahoney*, at **Attachment 1**;
- Updated Acoustic Impact assessment prepared by *JHA* at **Attachment 2**;

2. Background

The site is located at 1 Surfview Road, Mona Vale (the site) (Lot 104 DP1066371 within the Northern Beaches Local Government Area (LGA), approximately 24km north-east of Sydney's CBD. The site is situated between Apex Park and Mona Vale beach. The irregularly shaped allotment has an area of 38,110m² and is zoned RE1 Public Recreation.

Development Consent DA2018/1771 was approved by Sydney North Planning Panel on the 18 February 2019 for the:

"Demolition of the existing surf club building and construction of a new surf club building, including a cafe, restaurant, and function space"

On 29 November 2019, Mod2019/0454 was approved for the modification of Development Consent DA2018/1771 which included:

- Deletion of the ground floor public male and female sanitary facilities (on the basis that Council is concurrently proposing to improve and increase the existing sanitary facilities at Mona Vale Beach, as well as providing new toilet facilities in Apex Park);
- Minor modifications to the internal configuration, including infill of one through-site link; and
- Installation of a cafe shade structure.

3. Proposed Modifications

The proposed modification to DA2018/1771 is sought pursuant to Section 4.55(1A) of the EP&A Act and is minor in nature and are of minimal environmental impact. The proposed modifications include:

- **Site Plan**
 - Addition of 2 new trees
 - Omission of previously proposed tree
- **Ground Floor**
 - Omission of entry awnings on both the eastern and western elevation
 - Omission of the screen on both the eastern and western elevation
 - Addition of louvres for ventilation of the gym on the western elevation
 - Re-configuration of rooms on the south-eastern portion of the ground floor
 - Addition of a gas meter louver door on the western façade
 - Signage zone for wall mounted cafe name signage, consistent with the club entry signage.
 - Redesign of Pergola
- **First Floor**
 - Omission of external screen
 - Shortening of screen to southern members balcony
- **Roof**
 - Removal of the entry awning
- **Material Schedule**
 - Plywood 'look' proposed for the balcony to be changed to fibre cement sheeting to match timber colour, resilience and durability

- **Amend conditions to enable part occupation certificates**
 - To enable part occupation certificates for the following uses:
 - Surf Life Saving Club;
 - Café
 - Restaurant
- **Amend condition 39 of the development consent**
 - Requirement for post-dilapidation report to consider potential impacts to road adjacent to site and not all truck routes to the site
- **Amend consent condition 44 Hours of Operation**
 - Members Lounge/restaurant and function room:
 - 7am to 10pm Sunday to Thursday
 - 7am to midnight Friday and Saturday
 - 7am to 1am New Year's Eve
 - Café
 - Remains unchanged

3.1 Consequential Modifications of Conditions

Modification of Condition 1 will be required as a consequence of the above physical works. The proposed physical modifications are proposed as follows (new in **bold/italic**, deletions in ~~strike through~~).

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

Architectural Plans – Endorsed with Council's Stamp		
Drawing No.	Dated	Prepared By
A.DA.00.001 Rev A – Cover Sheet	15.10.18	Warren and Mahoney
A.DA.00.001 Rev A – Location Plan	15.10.18	Warren and Mahoney
A.DA.02.001 Rev A – Site Analysis Plan	15.10.18	Warren and Mahoney
A.DA.02.002 Rev A – Existing/Demolition Plan	15.10.18	Warren and Mahoney
A.DA.02.003 Rev A – Staging/Temporary	15.10.18	Warren and Mahoney
A.DA.02.004 Rev B C – Proposed Site Plan	13.09.19 11.08.21	Warren and Mahoney
A.DA.10.001 Rev B D – GA – Ground Level	13.09.19 11.08.21	Warren and Mahoney

A.DA.10.002 Rev B D – Level 1	13.09.19 11.08.21	Warren and Mahoney
A.DA.11.001 Rev A D – Roof Plan	15.10.18 11.08.21	Warren and Mahoney
A.DA.12.001 Rev A Landscape Plan	15.10.18	Warren and Mahoney
A.DA.20.001 Rev B D – North & East Elevations	13.09.19 11.08.21	Warren and Mahoney
A.DA.20.002 Rev B D – South & West Elevations	13.09.19 11.08.21	Warren and Mahoney
A.DA.30.001 Rev B D - Sections	13.09.19 11.08.21	Warren and Mahoney
A.DA.40.001 Rev A D – Material Schedule Sheet 01	15.10.18 11.08.21	Warren and Mahoney
Landscape Master Plan – Ground Floor, issue C	October 2018	Arcadia Landscape Architecture
Landscape Detail Plan – Southern Precinct, issue C	October 2018	Arcadia Landscape Architecture
Landscape Detail Plan – Northern Precinct, issue C	October 2018	Arcadia Landscape Architecture

(b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

(c) The development is to be undertaken in accordance with the following:

Engineering Plans		
Drawing No.	Dated	Prepared By
ESK01 Rev 3 – Electrical Services Spatial Requirements	09.09.18	Northrop
HSK01 Rev 5 – Hydraulic Services Spatial Requirements Ground Level	22.10.18	Northrop
HSK02 Rev 5 – Hydraulic Services Spatial Requirements Level 1	22.10.18	Northrop
HSK03 Rev6 – Hydraulic Services Spatial Requirements Roof Level	22.10.18	Northrop
MSK01 Rev 4 – Mechanical Services Spatial Requirements	14.10.18	Northrop

An amendment to the consent conditions in relation to occupation certificate requirements is required to allow part occupation certificates to be obtained for the following uses:

- Surf Life Saving Club
- Café
- Restaurant.

As conditions 32, 33 and 34 are not relevant to the Surf Life Saving Club, it is proposed that these conditions apply only for an occupation certificate in relation to the café and restaurant uses to enable an occupation certificate to occur Surf Life Saving Club.

Amendment to condition 39 'Post Dilapidation Report' is also proposed to provide a clearer understanding of assets which are to be considered in the post dilapidation report. The current condition is open to interpretation and requires amendment to ensure only roads immediately adjacent the site are to be considered in the post-dilapidation report.

The proposed modification to conditions 30 to 40 is as follows (new in ***bold/italic***, deletions in ~~strike~~through).

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE **AN** OCCUPATION CERTIFICATE

The following conditions are to be met prior to the issuance for a partial occupation certificate for the Surf Life Saving Club

30 Geotechnical Certification Prior to Occupation Certificate

Prior to the issue of ~~the~~ **an** Occupation Certificate, Form 3 of the Geotechnical Risk Management is to be completed and submitted to the Principal Certifying Authority

Reason: To ensure geotechnical risk is mitigated appropriately.

31. Landscaping

A qualified landscape architect/designer is to certify that the landscaping works have been completed in accordance with the approved Landscape Plan referenced in this consent, as amended by any conditions of consent.

Reason: To ensure the approved landscape solution is provided

~~32. Registration of Food Business~~

~~The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.~~

~~Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.~~

~~33. Waste agreement~~

~~Documentation supplied by Sydney Water regarding evidence of the trade waste agreement must be provided to the certifying authority prior to the issue of an Occupation Certificate~~

~~Reason: protect Public and Environmental Health values~~

~~34. Kitchen Design, construction and fit out of food premises certification~~

~~Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a person who is eligible as a 'Member' of Environmental Health Australia (EHA) that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.~~

32 ~~35~~ Mechanical Ventilation certification

Prior to the issuing of the ~~any interim/final~~ **relevant** occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements

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36~~39~~ Post-Dilapidation Report

The applicant is to engage a suitably qualified person to prepare a post-dilapidation report to **roads immediately adjacent to** ~~all truck routes to and from~~ the site. The report is to be submitted to and approved by Council's Traffic Engineer prior to the issue of any Occupation Certificate. The condition of the road is to be compared to the asset condition as noted in the pre-dilapidation report. Any noted damage is to be rectified by the applicant, to the satisfaction of Council, prior to the issue of any Occupation Certificate. The rectification works are to be undertaken by the applicant at no cost to Council.

Reason: To ensure all assets are left in a serviceable state or repaired to ensure ongoing serviceability of the asset.

37 ~~40~~ Plan of Management

A Plan of Management (POM) for the operation of the premises is to be prepared and submitted to Council for approval prior to the issuance of an occupation certificate. The POM must include measures to address

- (a) Hours of operation
- (b) Acoustics
- (c) Capacity
- (d) Complaints
- (e) Major events including multiple functions
- (f) Consistency with conditions of this consent

The following conditions are to be met prior to the issuance of an occupation certificate (either in part or together) for the following:

- Café
- Restaurant

38. Registration of Food Business

The food business must be registered with the Appropriate Regulatory Authority, prior to an Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

39. Waste agreement

Documentation supplied by Sydney Water regarding evidence of the trade waste agreement must be provided to the certifying authority prior to the issue of an Occupation Certificate

Reason: protect Public and Environmental Health values

40. Kitchen Design, construction and fit out of food premises certification

Prior to the issuing of any occupation certificate, certification is to be provided from a person who is eligible as a 'Member' of Environmental Health Australia (EHA) that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Amendment to condition 44 to enable additional operational hours for Member's lounge/restaurant and function room. The proposed modification to Condition 44 in the Conditions of Consent is proposed as follows (new in **bold/italic**, deletions in ~~strike through~~).

44. Hours of Operation

The hours of operation are to be restricted to: 7am to 10pm (~~7 days, inclusive of public holidays~~ **Sunday to Thursday**), **7am to midnight (Friday and Saturday)**, and **7am to 1am (New Year's Eve)**

Café: 7am to 5pm (7 days, inclusive of public holidays)

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: To ensure that amenity of the surrounding locality is maintained.

4. Section 4.55(1A) Assessment

In regard to this proposed modification, Council consent is sought for a modification under Section 4.55(1A) of the Act, which states;

"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) it is satisfied that the proposed modification is of **minimal environmental impact**, and*
- (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)."*

For the reasons outlined below, Section 4.55(1A) of the Act is the most appropriate mechanism for which to seek the proposed modifications to DA2018/1771.

The proposed modifications will not introduce any new environmental impacts, remain sympathetic to the design of the building and not significantly alter the approved development when viewed from the public domain. No additional impacts in regard to solar access or overshadowing will result from the proposed modifications.

Additional hours proposed for the member's lounge, restaurant and function room are required to support the future operations on site. All environmental impacts associated with the operation of the member's lounge, restaurant and function room will remain relatively unchanged, with additional noise impacts considered further in the revision B of the Noise Impact Assessment, provided in **Attachment 2**. The Noise Impact Assessment identifies that the operation hours proposed result in a compliant outcome, with the exception of 1 hour proposed for New Year's Eve between 12am to 1am. Notwithstanding, the Noise Impact Assessment states:

In our opinion, this can be considered an hour period with high level of activity and therefore the background noise level will increase the NSW LGA criteria. This scenario is expected to comply with the NSW LGA criteria and permission should be granted for the proposed operation time during New Year's Eve.

With regard to the material substance of the proposed modifications:

- The proposed modifications result in a development outcome that is substantially the same as the original development.
- The fundamental characteristics and essence of the proposed development remain unchanged.

- The development remains consistent with the built form as approved and continues to complement the prominent building form and character of the surrounding area.
- The proposed alterations and additions including the re-design of the pergola structure, have been carefully designed to be sympathetic to the building design and the context of the surrounding area.

Overall, the modifications will maintain substantially the same development as approved and will not introduce any new environmental impacts to the approved development. The modification does not alter the development's consistency with the key planning controls and includes no change to use, density, FSR or building envelope on site. Therefore, it is considered that the proposed modification is eligible for Council's consent under Section 4.55(1A).

4.55(3) requires Council, in determining an application for modification of a consent, to take into consideration matters referred to in section 4.15(1) as are of relevance to the development application and consider the reasons given by the consent authority for the grant of the consent that is sought to be modified. As identified throughout the report, the proposed modification will remain consistent with the reasons for the consent of DA2018/1771 with relevant matters for consideration under 4.15(1) addressed below.

5. Section 4.15 Assessment

In determining an application for modification of a consent under Section 4.55(1A), the consent authority must take into consideration the matters referred to in section 4.15(1) in relation to the development the subject of this application.

5.1 State Environmental Planning Policies

A list of SEPPs including SEPP State and Regional Development 2011 and SEPP Coastal Management 2018 has been considered under the Original DA. The subject application, which is minor in nature, will not affect any of the above State Environmental Planning Policies applying to the site. Overall, the proposed modifications;

- Will not affect public access to and along the foreshore and will not cause any impacts on coastal hazards or increase the risk of coastal hazards in relation to any other land as was approved under the original DA;
- Will not cause any additional impacts to what was approved in regard to view loss, overshadowing and visual amenity; and
- Will not alter the use of the site and will not introduce any new uses to the site as approved under the original DA.

5.2 Pittwater Local Environmental Plan 2014

The proposed modifications have been considered in terms of the relevant provisions of *Pittwater Local Environmental Plan 2014* (PLEP 2014) below;

- **Clause 2.1 - Land Use:** No change to the approved land use is proposed.
- **Clause 4.3 - Height of Buildings:** No change to the height of the development will occur as a result of the proposed modifications.
- **Clause 4.4 - Floor Space Ratio:** No change to the FSR will occur as a result of the proposed modifications.
- **Clause 5.10 - Heritage Conservation:** The site is not listed as a heritage item or located within a heritage conservation area as per the PLEP2014. The proposed modifications are minor in nature and will not impact any heritage items located in the vicinity of the site.

5.3 Pittwater Development Control Plan 2014

The proposed modifications will not change the development's consistency with any relevant controls in the PDCP2014.

5.4 Likely Impacts

Noise

Consideration of acoustic impacts associated with the proposed hours of operation has been included in **Attachment 2**. The report provides a detailed breakdown of the potential noise generated as a result of the proposed hours of operation. The report concludes that the predicted noise levels indicate:

- that the NSW LGA day criteria (7:00am to midnight) are met for all scenarios at all octave bands.
- some exceedances in octave bands for night criteria (midnight to 7:00am).

The proposal seeks to modify hours of operation for the member's lounge/ restaurant and function room by one hour after midnight (12am to 1am) to occur only on New Years Eve. As this hour period is expected to experience a higher level of activity, the report highlights that the background noise level will increase the NSW LGA criteria during this period. As such, the proposal is expected to comply with NSW LGA criteria and permission should be granted for the proposed operation time on New Year's Eve.

In light of the above and findings of the Noise Impact Assessment, the proposed extended hours of operations and impacts associated with these are reasonable and represent a development outcome substantially the same as that originally approved.

Other

The proposed modifications do not introduce any new development or land use from that approved. Further, the proposed modification will not create any significant adverse additional environmental, social or economic impacts beyond those already considered by Council assessment of DA2018/1771.

5.5 Suitability of the Site

The proposed modification does not change the suitability of the site for the proposed development. There are no anticipated impacts on the surrounding natural and built environments, and the proposal remains permissible under all relevant planning controls.

5.6 Public Interest

The proposed amendments will not adversely impact on the surrounding properties, public domain and will not alter the overall approved envelope, use or built form. It is therefore considered to be in the public interest.

6. Conclusion

As detailed in this request, the proposed changes are consistent with the requirements under Section 4.55 (1A) of the Act. Specifically,

- The development as proposed to be modified remains substantially the same development as that for which consent was originally granted;
- The proposal is consistent with relevant SEPPs, LEP and DCP provisions; and
- The proposed modifications are minor, consistent with applicable statutory planning controls and will not result in any adverse environmental impacts.

We therefore conclude that the proposed modification should be approved.

Should you have any questions or wish to discuss any of this information in further detail, please do not hesitate to contact me on 02 8667 8668.

Kind Regards,



Tom Cook

Director

Attachment 1: Updated Architectural Plans, prepared by *Warren and Mahoney*

Attachment 2: Updated Acoustic Impact assessment prepared by *JHA*