

27 January 2021

Mr Phillip Lane  
Principal Planner  
Northern Beaches Council  
Civil Centre, Pittwater Road, Dee Why

Dear Mr Lane

**Statement of Modification for a Section 4.55(1) Modification - DA2020/0432  
Lot 1, DP847020, 9-11 Birdwood Avenue, Collaroy  
Construction of a Seniors Housing or Housing for Persons with a Disability and Strata  
Subdivision**

This Statement has been prepared as supporting documentation for a Section 4.55(1) Modification to Clause 15 of the Notice of Determination for DA2020/0432 made on 9 December 2020 in respect of the construction of a seniors living development at premises known as 9-11 Birdwood Avenue, Collaroy.

The application seeks to modify Clause 15, Stormwater Disposal Details. This condition requires certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850. As Council is no doubt aware, there is no on-site stormwater detention required on this site and this has previously been confirmed by Council's Development Engineers.

It is evident the wording of Clause 15 is in error. The full clause, as prescribed in the Consent, is listed below:

**15. Stormwater Disposal Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850" and generally in accordance with the concept drainage plans prepared by Henry & Hymas Pty Ltd, drawing number 19685\_DA\_C000, 19685\_DA\_C100, 19685\_DA\_C101, 19685\_DA\_C200, dated 24/03/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Site stormwater to be connected to proposed kerb inlet pit in front of the subject site in Birdwood Avenue.
- ii. Subsurface flows are to be adequately collected and connected to Council's piped drainage system in Birdwood Avenue.
- iii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

The modification seeks to modify Clause 15 in terms of the following:

**15. Stormwater Disposal Details with proposed modifications as shown:**

The Applicant is to provide a certification of drainage plans ~~detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850"~~ and generally in accordance with the concept drainage plans prepared by Henry & Hymas Pty Ltd, drawing number 19685\_DA\_C000, 19685\_DA\_C100, 19685\_DA\_C101, 19685\_DA\_C200, dated 24/03/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Site stormwater to be connected to proposed kerb inlet pit in front of the subject site in Birdwood Avenue.
- ii. Subsurface flows are to be adequately collected and connected to Council's piped drainage system in Birdwood Avenue.
- iii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

**15. Stormwater Disposal Details as modified:**

The Applicant is to provide a certification of drainage plans generally in accordance with the concept drainage plans prepared by Henry & Hymas Pty Ltd, drawing number 19685\_DA\_C000, 19685\_DA\_C100, 19685\_DA\_C101, 19685\_DA\_C200, dated 24/03/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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- iii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

Statutory Provisions for Section 4.55 Modification (CF previous S96) are set out below:

### **3.3 STATUTORY PROVISIONS FOR SECTION 4.55 MODIFICATION (CF PREVIOUS S96)**

It is submitted that the proposed modification falls within the definition of a Section 4.55 Modification of Consents – generally, subsection 1.

- (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. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.

**Note—**

Section 380AA of the [Mining Act 1992](#) provides that an application for modification of development consent to mine for coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

- (1A) *Modifications involving minimal environmental impact* 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 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), 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 any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

- (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.*

**Source: EP&A Act 1979, Section 4.55**

The proposed Modification, as it relates to Clause 15 of the Development Consent DA2020/0432, is deemed to be a minor error in the manner in which Council has formulated the Requirements for Stormwater Disposal, noting there is no requirement for any on-site stormwater detention.

The Modification, if approved by Council, will ensure that the land will remain for the purpose of a seniors housing or housing for persons with a disability as approved on 9 December 2020. The Modification does not alter the merit-based assessment that generated approval granted by Northern Beaches Council. The approval, if modified, will retain the essence of the original consent and is therefore considered to fall within the relevant tests for Section 4.55 of the Act.

Yours sincerely



**DENIS SMITH**  
Principal