

Level 8, 65 York Street
SYDNEY NSW 2000

T: 8215 1558

F: 8215 1600

E: michael@planninglawyer.com.au

The Chief Executive Officer
Northern Beaches Council
1 Belgrave Street
MANLY NSW 2095

Our Ref: MM:09739
Your Ref: DA2020/1077

18 November 2020

Attn: Gareth David

Dear Mr David,

DA2020/1077 - 23 Reynolds Crescent Beacon Hill
Proposed alterations and Additiona to Dwelling House

I refer to Council's letter dated 22 October 2020 sent to the applicant for DA2020/1077, Michael Lescesin, and to my written response to Council on behalf of the owner of the property, Natali Calci dated 3 November 2020. Both Mr Lescesin and Ms Calci authorise me to make this submission on their behalf. Please consider this letter as an amendment to DA2020/1077 under clause 55 of the *Environmental Planning and Assessment Regulation 2000*.

Mr Lescesin wishes to amend DA2020/1077 by changing the description of the development for which consent is sought and substituting the attached Revision B architectural plans for the architectural plans originally lodged with the application. The purpose of the amendment is to address Council's concern that part of the work for which consent as originally sought has been carried out. Development consent is now only sought for the use of the unauthorised works. The owner has also lodged an application for a building information certificate for the unauthorised work, which is to be dealt with as a separate issue.

The description of the proposed development as amended, is as follows:

1. Consent for use of unauthorised works comprising:
 - on the lower ground floor – new door opening to front part of the eastern façade and new highlight window opening to the northern façade; and
 - on the upper ground floor – new door opening to front part of the eastern façade and new highlight window opening to the northern façade, new entry awning and increase wall height by 500 mm and new roof frame
2. Consent for new building work comprising:
 - placement of doors in door openings on the lower and upper ground floors on the eastern façade, placement of window frames and glass in highlight windows on the lower and upper ground floors on the northern façade; and
 - placement of roof tiles.

The amended architectural plans are described as plans prepared by Design: Studio ML titled alterations and additions to existing dwelling job 1805 dwg nos DA01 to DA08, revision B. A copy of the plans is attached.

The amended plans distinguish between the building work that has been carried out without consent (and which development consent for use only is sought) and new building work for which development consent for construction is sought. The fact that part of the building work has been carried out without development consent is now not a legal impediment to the Council granting development consent to DA2020/1077.

The revision B plans also illustrate the relationship between the building work proposed in DA2020/1077 and the building work approved under CDC 2019/431/01. The new window and door openings and new roof are all alterations to the existing dwelling on the land. These works were expressly excluded from the CDC approved plans. The works are structurally independent of the CDC works. There is no practical need to complete the CDC approved works in order to carry out these components of the development proposed in DA2020/1077.

The new entry awning does rely on works approved under CDC 2019/431/01 for physical support, but does not modify those works. We note that Council has the power to approve a development application for proposed works regardless of whether they modify or rely on works approved under a complying development certificate, as decided by Commissioner Gray in *Pritchard v Northern Beaches Council* [2020] NSWLEC 1310.

The other concern in Council's letter dated 22 October 2020 is that Council cannot approve the work proposed in DA2020/1077 until the owner has obtained an occupation certificate for the work approved under CDC 2019/431/01. The applicant's position is that there is no legal or practical reason why the owner must obtain an occupation certificate for the work approved under CDC 2019/431/01 before Council approves the work proposed in DA2020/1077. The decision in *Pritchard* does not prevent all approved work from proceeding concurrently where it is practical to do so. The new window and door openings and the new roof are all structurally independent of the CDC works. There is no reason why the CDC work cannot proceed concurrently with the work proposed in DA2020/1077, and an occupation certificate be obtained for all approved work at the same time.

The proposed awning is attached to a part of the building approved under CDC2019/431/01. However it does not alter or amend that work. If Council is concerned that an occupation certificate may not be issued for the work approved under CDC2019/431/01, the applicant would not oppose a condition on the granting of approval for DA2020/1077 preventing the issue of an occupation certificate for the work approved by DA2020/1077 unless an occupation certificate for the work approved under CDC 2019/431/01 has been issued.

Please also note that the applicant has been served with a development control order requiring him to cease all work on the site until all unauthorised works are regularised. The approval of this development application is necessary to regularise those works and to complete the building work at the premises. The period for appealing the order expires on 25 November 2020. If this development application is not approved before then, the applicant will have no option but to appeal the development control order to the Land and Environment Court. The applicant requests Council determine DA2020/1315 by no later than close of business on **24 November 2020**.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mantei', followed by a period.

Michael Mantei
Lawyer Director – Planning Law Solutions
Accredited Specialist Local Government and Planning Law