

General Manager  
Northern Beaches Council  
725 Pittwater Road  
DEE WHY NSW 2099

27 May 2021

Via Email: [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Attn: Catriona Shirley

Dear Catriona

**DEVELOPMENT APPLICATION No. DA 2021/0436**  
**30 BEATRICE STREET CLONTARF**  
**ALTERATIONS AND ADDITIONS TO DWELLING HOUSE INCLUDING SWIMMING POOL**

Urbanesque Planning has been engaged to respond to Council's letter in the above matter dated 5 May 2021. Council is concerned as to whether a development application is an appropriate pathway towards achieving alterations and additions to a dwelling approved under complying development, but which has not been constructed nor issued with an occupation certificate.

The Land and Environment has recently considered this question under *Pritchard v Northern Beaches Council [2020] NSWLEC 1310*). Council was a party to this case. The deliberations and reasoning of the Court are unambiguous. (Emphasis added).

*50. The parties agree that the proposed development is not complying development. As such, s 4.2(2)(b) is not available to the applicants and, **therefore, development consent can be obtained pursuant to s 4.2(2)(a) and Div 4.3, which requires the making of a development application** (see s 4.12). Section 4.9(b) **does not present any obstacle to applying for development consent** pursuant to s 4.2(2)(a) and Div 4.3, as it is agreed that the proposed development is not complying development.*

*51. As a development application and consent is for prospective works, **the fact that other works are required to take place prior to the proposed development is not an impediment to the making of an application and the granting of consent for the proposed development**. This is consistent with the comments by Preston CJ in *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61* at [3]-[4]. This means that the carrying out of the proposed development is dependent on the carrying out of the development approved by the CDC. **The CDC and the development consent, if granted, would need to be "read together in order to understand the altered [building] that has been approved"**, in the words of Preston CJ (at [4]).*

The approach is not dissimilar to a development application providing for alterations and additions to a development, where the subject development has not yet been constructed such as referred to in *Baron Corporation v City of Sydney*.

We can see no reason whereby there is justification for Council to reject the authority of the Land and Environment Court, particularly in a case in which Council was a party. In our view such a stance may

be viewed as contempt of Court. The development application is competent and is an appropriate vehicle for seeking alterations and additions to the works approved under CDC.

In the absence of any legal authority to the contrary, it is our view that Council has no option other than to assess the development application in good faith pursuant to Section 4.15 of the Act.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Sarich', with a stylized flourish at the end.

Eugene Sarich  
**Urbanesque Planning Pty Ltd**