

25 July 2019

The General Manager
Northern Beaches Council
PO Box 882
MONA VALE NSW 1660

Dear Sir,

**APPLICATION TO MODIFY DEVELOPMENT CONSENT
SECTION 4.55 (1) ENVIRONMENTAL PLANNING & ASSESSMENT ACT**

Development Application No:	DA 2019/0083
Date of Determination:	17 July 2019
Premises:	Lot 1 DP 76807 No. 29-33 Pittwater Road, Manly
Proposed Development:	Alterations and additions to an existing mixed use development

On behalf of JSALT Pty Ltd, this submission has been prepared to assist Council in the consideration of an application pursuant to Section 4.55(1) of the Environmental Planning & Assessment Act 1979 to alter the development as approved by Development Consent DA 2019/0083.

The application will seek to modify Conditions No 12 and No 21 within the Notice of Determination issued 17 July 2019.

BACKGROUND

An application for consent for "*Alterations and additions to an existing mixed use development*" was approved by Council by Notice of Determination dated 17 July 2019, following a Development Determination Panel meeting held on the 10 July 2019.

The Notice of Determination included Conditions which we believe were issued in error and this application will propose minor amendments to the requirements of the conditions to resolve any ambiguity in the consideration of a future Construction Certificate application

The works that are the subject of the consent have not commenced.

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PROPOSED MODIFICATION

In particular, the proposed modifications involve the following amendments to Notice of Determination and we request that the recommended Conditions included within the Minutes of Development Determination Panel – 10 July 2019 be implemented.

Specifically, we propose the amendments address the following conditions:

➤ **Condition 12**, which read:

“The existing southern wall is to be rectified to be wholly within the subject site’s property boundaries. Certification shall be provided by a suitable qualified structural engineer that the remaining section of the southern wall can be made structurally sound. Details demonstrating compliance with this condition are to be provided to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate”.

Reason: To ensure development is wholly contained within the relevant property boundaries.

Our submission to Council’s Development Determination Panel outlined that Condition 12 refers to the southern wall of the property. A submission by the neighbouring owner identified an apparent encroachment on part of the wall and our reading of Condition 12 is that this is to be rectified.

Our client does not oppose carrying out the measures necessary to resolve the current encroachments over the southern neighbouring property.

The Certification by a structural engineer, relating to the ‘existing’ wall should however provide scope for any ‘issue’ to be addressed as part of the required rectification. The last part of the condition requires that structural engineering details be provided to demonstrate how compliance with the need to rectify any encroachment may be achieved and those details are to be provided to the Certifier prior to the issue of a CC.

In our view, the effect of the Condition as issued is that there could be an inference that the encroaching portions of the southern wall have to be rectified prior to the issue of a Construction Certificate.

Our understanding of Council’s agreed position (as outlined in the Panel Minutes) was that the requirement that has to be satisfied, prior to the issue of a CC, is that structural engineering details must be provided to demonstrate how the rectification can be carried out, resulting in a structurally sound wall after rectification.

We believe that the additional condition (Condition 21a) should be included to the effect that rectified wall is to be certified by a structural engineer after the works have been completed and certification prior to the issue of an Occupation Certificate.

➤ **Condition 21**, which read:

“No portion of the proposed building or works, as approved within the subject site, are to encroach upon any other land. Details demonstrating compliance with this condition are to be provided to the satisfaction of the Certifying Authority prior to the issue of the Occupation Certificate”.

Reason: To ensure structures are contained within the site

We understand that Condition 21 (originally included as Condition 13 in the recommendation to the DDP) was included with the specific intent of addressing the concerns related to the encroachment of the southern wall (as referenced in Condition 12).

The wording of the condition as issued has the effect of precluding any encroachment upon any other land, which contradicts the approval for the proposed awnings along Pittwater Road & Denison Street.

We believe the wording of this condition needs to be clarified to specifically reference any encroachment of the southern wall.

From the deliberations at the Panel meeting, we understand this principle was acceptable and we request that the condition be so modified.

JUSTIFICATION

The Environmental Planning & Assessment Act 1979 provides for the modification of a consent under Section 4.55(1) to correct a “*minor error, misdescription or miscalculation*” and which notes:

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.

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

In our view, the Notice of Determination was issued in error as it does not reflect the requirements of the Minutes of the Development Determination Panel Meeting of 10 July 2019.

We believe it is appropriate for Council to consider our request under S4.55(1) of the EPA Act 1979 to rectify the error and modify the consent as sought.

Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

Yours faithfully,

A handwritten signature in black ink, reading "Vaughan Milligan". The signature is written in a cursive style with a large, stylized 'V' and 'M'.

VAUGHAN MILLIGAN