

1<sup>st</sup> September 2023

The General Manager  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

Dear Sir/Madam

**SECTION 4.56 MODIFICATION - RESIDENTIAL FLAT BUILDING &  
BASEMENT CARPARKING  
30 FAIRLIGHT STREET, FAIRLIGHT  
DA2021/2034**

I refer to the subject application and on behalf of the applicant, 30 Fairlight P/L, application is hereby made pursuant to Section 4.56 of the Environmental Planning & Assessment Act 1979, as amended, for the modification of the subject consent.

By way of background, it is advised that Land & Environment Court Appeal No. 2021/00356650 was approved on the 1<sup>st</sup> December 2022 and granted consent to DA2021/2034 for the *Demolition of existing dwelling house and construction of a residential flat building containing 5x3 bedroom dwellings and basement carpark* at 30 Fairlight Street, Fairlight, subject to a number of conditions.

Modification Consent No. 2022/0717 was approved by Council on the 15<sup>th</sup> March 2023 and granted consent to *Modification of Development Consent DA2021/2034 granted for Demolition of the existing dwelling house and construction of a residential flat building containing 5x3 bedrooms dwellings and basement carpark* subject to conditions.

This application is to be read in conjunction with the following documentation:

- Amended Architectural Plans prepared by DKO Architecture, Project No. 00012781 Drawing No. DA200 – DA 505 and dated 17/08/2023.
- Amended Landscape plans prepared by Black Beetle, Job No. BB 1294, and dated 09/03/2023.
- Arborists Report prepared by Jacksons Nature Works and dated 15/8/23.
- BASIX Certificate No. 1235088M\_07 and dated 28/8/2023.
- NatHERS Summary Certificate No. 0006397070 and dated 3/08/2023.
- Covering Letter – Stormwater prepared by ITM Design P/L and dated 31/8/23.

## **Modifications Proposed by this Application**

The proposal seeks approval for the modification of the approved development as detailed within the plans and reports which accompany this application. The proposed modifications include:

- Planter and deep soil reduced to accommodate relocation of mailbox for DDA compliance. This is an unavoidable modification which is required so as to ensure that equitable access is provided to the proposed mailboxes.
- Amendment to location of carpark lobby doors.
- OSD tank extended to accommodate minimum volume as per Stormwater Engineer's report. This is an unavoidable modification required in order to ensure that compliance is achieved with the minimum OSD storage volume. Reference is made to the Arborists Report prepared by Jacksons Nature Works and dated 15/8/23 and which confirms that the modification will not impact upon the adjoining tree.
- Additional door added for compliance as alternate fire egress with NCC D2D6.
- Landscaping and planter replaced with terrace hardscape to accommodate OSD tank volume below.
- Wall of front terrace rationalised for buildability.
- Window opening reconfigured.
- Internal layout reconfigured and rationalised.
- Clarification of roof services previously not labelled including AC condensers, hot water units and mechanical vent exhausts. All roof top plant is to be concealed by a metal screen enclosure.
- PV panels added.
- Skylights deleted.
- Solid access hatch cover amended to glazed hatch.
- Amendments to the courtyard landscaping.

The application also seeks to modify Condition 1 to reflect the amended plans accompanying this application.

The proposal also seeks approval to modify Condition 25 – Underground Services.

Condition 25 currently reads:

*All services connecting to/servicing the development are to be provided underground (both within the site and within the adjacent road reserve).*

*Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.*

*Reason: to minimise visual clutter associated with services and infrastructure.*

In relation to this condition, it is advised that electricity supply to the subject site is currently located on the southern side of Fairlight Street and is currently provided to the property via an aerial service which connects with the fascia of the existing dwelling.

It is submitted that the undergrounding of the electricity supply from the southern side of Fairlight Street to the site is an unreasonable impost upon the subject site, noting that it would involve the digging up of the road.

As an alternative, it is proposed to provide a private pole at the boundary of the site (which the existing aerial service would connect to) and to provide an underground service within the boundaries of the site.

It is submitted that this would still provide for a reduction in visual clutter by eliminating an aerial connection to the building.

It is therefore requested that Condition 25 be amended so as to read:

*All services connecting to/servicing the development are to be provided underground within the site.*

*Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.*

*Reason: to minimise visual clutter associated with services and infrastructure.*

All other aspects of the proposal will remain the same.

### **Impacts of the Proposal**

It is my opinion that the proposed modifications sought by this application will not result in any detrimental impacts upon the streetscape of the locality, the character of the surrounding area or upon the amenity of adjoining property owners.

In this regard, it is noted that:

- The proposal will remain a residential flat building.
- The proposal will not result in an increase to the Floor Space Ratio.
- The proposal will remain compliant with the maximum height of building control applicable to the site.

- The proposal once completed will result in development substantially the same as that originally approved by the Council.
- The proposal will not result in any unreasonable privacy impacts upon the amenity of adjoining properties.
- The proposal will not result in any adverse tree impacts.
- The proposal will continue to provide for a landscape outcome consistent with the requirements of the Council and which will make a positive contribution to the landscape character of the locality.

#### **Section 4.56 – Modification by consent authorities of consents granted by the Court - Environmental Planning & Assessment Act 1979, as amended**

Section 4.56 of the Environmental Planning & Assessment Act 1979, as amended, permits an applicant to seek approval for the modification of a development consent in the following circumstances:

**(1) *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 Court 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 the consent was originally granted and before that consent as originally granted was modified (if at all), and*
  - (b) 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*
  - (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, 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.*
- (1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into*

*consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In response to the requirements of Section 4.56(1)(a) of the Act it is submitted that the proposal will remain substantially the same development for which consent was originally granted.

In forming this opinion, it is submitted that:

- The proposal will remain a residential flat building with basement carpark having an identical building envelope to that previously approved by the Court.
- The proposed modification will not result in any perceivable change to the built form or height of the approved development.
- The proposed modification will result in a minor reduction in the deep soil zone however will continue to provide for a landscape outcome consistent with the requirements of the Council and the character of the surrounding area.
- The proposal will remain compliant with the maximum height of building control applicable to the site.
- Other residential amenity considerations such as private open space, and overshadowing will remain the same as approved by the Court.

#### **Section 4.15(1) of the Environmental Planning & Assessment Act 1979**

The following assessment is provided against the requirements of Section 4.15(1) of the Act.

##### **Environmental Planning Instruments – Section 4.15(1)(a)(i)**

The proposed development remains permissible with the consent of the Council under the provisions of the Manly LEP 2013.

The maximum Building Height & Floor Space Ratio in this application is identical to that approved by the Land & Environment Court of NSW.

In addition to the above it is submitted that the proposal is acceptable on the following planning grounds:

- The proposal will continue to provide for development which is consistent with the applicable objectives of the R1 - General Residential zone in that:
  - The proposal will continue to provide for a residential flat building with a basement carpark.

- The proposed modifications will not reduce the approved high level of amenity provided to each of the units and which is consistent with development anticipated for a general residential environment.

The proposal is considered to remain consistent with the approval of DA2021/2034 and therefore should be supported by Council.

#### **Draft Environmental Planning Instruments – Section 4.15(1)(a)(ii)**

There are no Draft Environmental Planning Instruments that applies to the proposal.

#### **Development Control Plans – Section 4.15(1)(a)(iii)**

It is considered that the proposal remains consistent with the applicable requirements of the Manly DCP.

#### **Impacts of the Development – Section 4.15(1)(b)**

It is my opinion based upon the findings of this report and the accompanying documentation that there will not be any unreasonable impacts resulting from the proposal.

In this regard, it is noted that:

- The proposal will remain a residential flat building.
- The proposal will not result in an increase to the Floor Space Ratio.
- The proposal will remain compliant with the maximum height of building control applicable to the site.
- The proposal once completed will result in development substantially the same as that originally approved by the Council.
- The proposal will not result in any unreasonable privacy impacts upon the amenity of adjoining properties.

#### **Suitability of the Site – Section 4.15(1)(c)**

It is my opinion that the suitability of the site for this form of development has previously been demonstrated through the granting of the original consent.

It is therefore considered that in the absence of any unreasonable impacts attributable to the proposal that the site is suitable for the modified development as proposed by this application.

### **Public Interest – Section 4.15(1)(e)**

It is my opinion that the proposed development is in the public interest as it is substantially the same as approved by the Land and Environment Court.

It is not considered that the proposed modifications will result in any adverse impacts upon adjoining properties or the locality.

### **Summary**

In summary, it is my opinion that the modification proposed by this application will result in development substantially the same as that previously approved by the Court and will not result in any unreasonable impacts.

Accordingly, it is considered that the proposed modification of the approved development as detailed within this submission at 30 Fairlight Street, Fairlight is worthy of the support of the Council.

It is requested that should you have any queries regarding this matter that you do not hesitate to contact me to discuss.



Andrew Minto

DIRECTOR

MINTO PLANNING SERVICES PTY LTD

Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.